THE PROCEDURE OF THE HOUSE OF COMMONS

A Study of its History and Present Form

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PREFACE

IT has been left to an Austrian scholar to accomplish a piece of work which some competent Englishman ought to have undertaken long ago. Dr. Redlich's book on the history and development of English parliamentary procedure fills a conspicuous gap in English constitutional literature. I welcome heartily an English translation of his book.

Sir Erskine May is, of course, the standard authority on English parliamentary practice. His great treatise is recognised as a classic, not only in his own country, but in every country which enjoys any form of parliamentary government. His unrivalled practical experience of parliamentary life and work, his intimate knowledge of the journals of both Houses, his extensive acquaintance with the English political and constitutional literature of his day, fully entitle him to that position. But May's object in writing his treatise was purely practical. He wished to give, and, by the volume of less than 500 pages which he published in 1844, he succeeded in giving, for the first time, a clear and comprehensive description of English parliamentary procedure as it then existed. He was compelled, as he tells us in the preface to his first edition, to exclude or pass over rapidly such points of constitutional law and history as were not essential to the explanation of proceedings in Parliament. In short, he wrote, not as an historian, but as an expert in parliamentary procedure. The introduction of historical matter was, of course, inevitable; the English Parliament strikes its roots so deep into the past that scarcely a single feature of its proceedings can be made intelligible without reference to history. But the historical portions of May's book are incidental and subsidiary, and though his historical knowledge was fully up to the level of his time, much of it now has an antiquated appearance. Hence his work left the field open to anyone who wished to approach the subject of parliamentary procedure from the point of view of the

scientific historian. Nor has the field been covered by any subsequent English writer. Bishop Stubbs, in the twentieth chapter of his Constitutional History, has summarised nearly all that is known — and not much is known — about procedure in the mediæval Parliament. Mr. Porritt, in his "Unreformed House of Commons," has a valuable chapter on parliamentary procedure before 1832. Sir William Anson and other constitutional writers have devoted attention to procedure in Parliament, as a part of constitutional law and practice. But the treatment in each of these cases has necessarily been partial and incidental. Dr. Redlich has, with characteristic German thoroughness, concentrated his attention on parliamentary procedure as a subject worthy of separate treatment. But he has, at the same time, recognised that it can only be adequately treated as a living and organic part of a living and organic whole, and his aim has been to show and illustrate the intimate relations which have always existed between the growth and development of parliamentary procedure and the contemporary political and social conditions of the country. He has brought to bear on his subject not only great erudition, but, what is more rare, especially in a foreign writer, knowledge derived from personal inquiry and observation. Hence a freshness and vividness of treatment which takes the book out of the "Dryasdust" category. And its value, as a piece of impartial and scientific work, is not impaired by the fact that it comes from a country where parliamentary procedure is, just now, a burning question. Dr. Redlich is an intelligent and a sympathetic student of English institutions, and he has written, on what is *primâ facie* a dry and technical subject, a book which is not only valuable but eminently readable.[1]

Without the guidance of the historic sense parliamentary procedure is a bewildering jungle. For the initiated, the

[1] It gains in some respects by being the work of a foreigner; for the foreign observer, though he may run the risk of occasionally going astray in the description or interpretation of institutions with which he is not familiar, yet sees things to which familiarity has blunted our senses.

forms and ceremonies of Parliament, often quaint and arbitrary in external appearance, are pregnant with historical significance. Take, for instance, the forms which until 1902 were invariably observed on the introduction of a bill into the House of Commons, and which are still occasionally observed. The Speaker puts the question that leave be given to introduce the bill, and unless, as rarely happens, the motion is opposed, proceeds to ask "Who will prepare and bring in the bill?" (I have known two experienced Parliamentarians who believed the question to be "Who is prepared to bring in the bill?") The member in charge replies with a list of names, including his own, then goes down to the bar of the House, and returns to the table with a paper which is supposed to be the bill, but is really a "dummy," and which he formally hands in. The whole thing is over in a few seconds, but it represents, in a compressed and symbolical form, proceedings which, in the seventeenth century, may have extended over days or weeks. There was first a debate in the House or committee on some alleged evil in the body politic, and a discussion whether it justified and required a legislative remedy. Then came the selection of a small body of members, with some one member as their spokesman, to devise an appropriate remedy. It was this spokesman who subsequently moved for leave to introduce a bill, and who named his colleagues in response to the Speaker's question. And when he went down to the bar, it was not for the purpose of immediate return, but for the purpose of retiring with his colleagues to some suitable place, possibly in the precincts of the House, but possibly at Lincoln's Inn, or at the Temple, or elsewhere, for deliberation, and for "penning" of the bill.

There are other forms which carry one back to a far remoter period of parliamentary history. Nothing can be more picturesque than the ceremonies which attend the signification of the Royal assent to legislative measures passed by the two Houses. The three silent figures, scarlet robed and cocked-hatted, who sit in a row, like some

Hindu triad, in front of the vacant throne; the Reading Clerk who declaims in sonorous tones the prolix tautologies of the Commission; the Clerk of the Crown and the Clerk of Parliaments, who, standing white-wigged and sable-gowned on either side of the table, chant their antiphony, punctuated by profound reverences, the one rehearsing the title of each Act which is to take its place on the statute book, the other signifying, in the accustomed form and manner, the King's assent. "Little Pedlington Electricity Supply Act." "Le Roy le veult." Between the two voices six centuries lie.

The Parliament at Westminster is not only a busy workshop; it is a museum of antiquities.

The rules of parliamentary procedure are the rules which each House of Parliament has found to be conducive to the proper, orderly and efficient conduct of its business. Some of them are old-fashioned, as in the case of other ancient institutions, but much ingenuity has been shown in adapting them to the circumstances and requirements of the time.

What, then, is the business of the House of Commons, the House with which Dr. Redlich is more specially concerned? Its business is threefold — legislative, financial, critical. It makes laws with the concurrence of the House of Lords and of the Crown. It imposes taxes and appropriates revenue. By means of questions and discussions it criticises and controls the action of the executive.

The making of laws is the function with which the House of Commons is most commonly associated in the popular mind. But this was not its original function, and perhaps is still not its most important function. The House is something much more than, and very different from, a merely legislative body. Napoleon, when framing a constitution for France, saw and expressed clearly the difference between a legislature as he conceived it should be and the British Parliament as it actually was. He professed the greatest reverence for the legislative power, but legislation, in his view, did not mean finance, criticism of the adminis-

tration, or ninety-nine out of the hundred things with which in England the Parliament occupies itself. The legislature, according to him, should legislate, should construct grand laws on scientific principles of jurisprudence, but it must respect the independence of the executive as it desires its own independence to be respected. It must not criticise the Government. Thus, according to Napoleon, ninety-nine per cent of the work of the British Parliament at the beginning of the nineteenth century lay outside the proper province of a legislature. And he would say the same to-day.

On the other hand Parliament is not a governing body. During one brief period in the seventeenth century the House of Commons took upon itself the task of administering the affairs of the country, but the experiment has not been repeated. In this respect the House differs materially from the county, district, municipal, and parish councils which administer local affairs. These councils conduct administration with the help of committees to which large powers, often of an executive character, are delegated, through the agency of officers appointed and paid by themselves, and at the expense of rates not only raised under their own authority, but levied by their own officers. Neither Parliament as a whole, nor the House of Commons in particular, does anything of this kind. It provides the money required for administrative purposes by authorising taxation; it appropriates, with more or less particularity, the purposes to which the money so provided is to be applied; it criticises the mode in which money is spent and in which public affairs are administered; its support is indispensable to those who are responsible for administration; but it does not administer. That task is left to the executive, that is to say, to Ministers of the Crown, responsible to, but not appointed by, Parliament.

It is this separation but interdependence of the criticising and controlling power on the one hand, and the executive power on the other, that constitutes the parliamentary system of government. In one sense it is the most artificial of systems, for it works by means of subtle and delicate checks,

counterchecks, adjustments, and counterpoises. In another sense it is not artificial, but natural, for it was not devised by any ingenious machinist or framer of constitutions, but has grown up through the operation of historical causes, slowly, gradually, we may almost say, instinctively and unconsciously. Unless these vital and fundamental principles of the British constitution are understood and appreciated, British parliamentary procedure is unintelligible.

The history of the English Parliament may be roughly divided into four great periods.

The first is the period of the mediæval Parliament, the Parliament of Estates. It is a development and expansion of the King's Council, of the Council in which the Norman King held "deep speech" with his great men. In the thirteenth century the word Parliament came to be applied to the speech so held on solemn and set occasions. The word signified at first the speech or talk itself, the conference held, not the persons holding it, for "colloquium" and "parliamentum" were practically identical. It was, as Professor Maitland says, rather an act than a body of persons. By degrees the term was transferred to the body of persons assembled for conference, just as the word "conference" itself has a double meaning. The persons assembled were the persons, or the representatives of the persons, whom the King found it needful to consult for matters military, judicial, administrative, financial, legislative. They were often grouped differently for different purposes. Gradually they solidified into two groups. The lesser landowners and the merchants threw in their lot with the burgesses. The greater clergy sat with the greater secular barons. The lesser clergy stood aloof. The proceedings resembled those of a modern Eastern durbar. They were partly ceremonial, partly practical. There were formal addresses, and there was doubtless much informal talk about public affairs. Grievances were brought up, and were sent to be dealt with by the appropriate authorities. The formal sittings of the two Houses were not of long duration. The functions of the Houses, as such, were at first mainly con-

sultative, but eventually the Commons House acquired an exclusive right of granting taxes and a substantive share in framing laws. The records of the proceedings are the Rolls of Parliament.

What was the history of procedure during this period? We derive from it much of our ceremonial. The formalities at the opening and close of the Session, and on the occasions when the Royal assent is given to laws, carry us back to the fourteenth century, but at the mode in which business was conducted on less formal occasions we can only guess, for the information given by the Parliament Rolls is scanty, and the description given by the "Modus tenendi Parliamentum" —a fourteenth-century document professing to describe how Parliaments were held under Edward the Confessor—is too fanciful to be trustworthy. The contents of the Rolls are mainly petitions, with or without their answers, but in the course of the fifteenth century procedure by petition came to be superseded for legislative purposes by procedure by bill, and the two Houses not only asked for new laws, but prescribed the form which those laws should assume. By the end of the first period, that is to say, by the close of Henry the Seventh's reign, procedure by bill, with the stages of three readings, was firmly established, and was applied, not only to changes in the general law, but also to the grant of money, and to the province of what would be now called private bill legislation.

The second period is the age of the Tudors and Stuarts, having for its central portion the time of conflict between the Crown and Parliament, between privilege and prerogative. For the procedure of this period our information is much more extensive. The journals of the House of Lords begin with the accession of Henry VIII, those of the Commons with the accession of Edward VI, when the Commons found permanent quarters in St. Stephen's Chapel. The Commons journals are at first very scanty, but gradually expand and include not only records of proceedings, but notes of speeches, which grew until the note-taking propensities of the Clerk

at the table were checked by resolutions of the Commons, who resented the King's calling for reports of their debates. After the admonition to Rushforth the journal becomes, what it has been ever since, a record of things done and not of things said.

The records of the Elizabethan Journals are expanded by Sir Symonds D'Ewes from other sources. Sir Thomas Smith, in his Commonwealth of England, and Hooker, in the account which he writes for the guidance of the Parliament at Dublin, give us descriptions which enable us to understand how business was conducted in the English Parliament under the great Queen. In the next century formal treatises on parliamentary procedure are compiled by Elsynge, Hakewel, Scobell, Petyt, and others. Under the Long Parliament reports of important speeches are occasionally printed and published "by authority," but for the most part we are dependent for our knowledge of debates on notes surreptitiously taken, and, notwithstanding the severe prohibitions against publication, sometimes communicated to the outside world through the *Mercurius Politicus* and other organs. Examples of such notes are supplied by the diaries of Goddard and Burton under the Protectorate. After the Restoration Andrew Marvell writes descriptive letters to his constituents at Hull, and Anchetil Grey, another member, compiles continuous reports of debates.

During all this period the law of Parliament, both substantive and adjective, as Bentham would phrase it, is continually growing as a body of customary law, and its development is recorded by entries in the journals, which are sometimes records of formal resolutions, sometimes mere notes of practice. The power of adjournment is distinguished from the power of prorogation, and is claimed by the Commons, who also successfully claim the power of determining the validity of elections. The committee system grows up. Small committees are appointed for considering the details of bills and other matters, and sit either at Westminster or sometimes at the Temple and elsewhere. For weightier

matters large committees are appointed, and have a tendency to include all members who are willing to come. Hence the system of grand committees, and of committees of the whole House, which are really the House itself in undress, with the Speaker out of the chair, and with less formality in the proceedings. During the revolutionary period committees assume the functions of executive government, like the famous executive committees of the French Revolution, but this is merely a temporary phase. At the end of the seventeenth century, and even earlier, parliamentary procedure is following the lines which it continues to retain until after the Reform Act of 1832.

"The parliamentary procedure of 1844," says Sir R. Palgrave in his preface to the tenth edition of May, referring to the date of the first edition, "was essentially the procedure "on which the House of Commons conducted business "during the Long Parliament."

The third period of parliamentary history may be taken as beginning with the Revolution of 1688 and ending with the Reform Act of 1832. The chief constitutional changes of this period, as registered in the statute book, are the Bill of Rights, the Act of Settlement, the Union with Scotland, the Septennial Act, the Union with Ireland. But the period was marked by two other great changes, of equal, if not of greater importance, the growth and development of the Cabinet system, and the growth and development of the party system. They were silent changes, not brought about by any act of the legislature; gradual in their operation; developed, modified, deflected, retarded by strong personalities, like Walpole, Pitt, George III; imperfectly appreciated, misinterpreted, misunderstood.

In the early part of the eighteenth century Montesquieu set himself the task of comparing the political institutions of the world, and of revealing the spirit of which they were the outward form. He visited England, attended parliamentary debates, mixed with English statesmen, and produced a study of the English constitution. He found in that con-

stitution a due balance of the monarchical, aristocratic, and democratic elements, a due separation of the executive, legislative, and judicial powers. The picture which he drew was a fancy picture, an idealised picture, like that which Tacitus drew of Germany for the instruction of his decadent countrymen. But it was the work of a genius, and it lived, to influence profoundly the thoughts of political writers and the action of statesmen. It influenced the writers of the Federalist, and, by following its lines, Alexander Hamilton and his colleagues framed for the United States of America a constitution differing widely in its main principles from the constitution of the mother country. It influenced Blackstone and De Lolme, and, with their help, founded the "literary theory of the English constitution," which was accepted as gospel on the Continent of Europe. Nor was the theory seriously shaken in England until Bagehot wrote those articles in the "Fortnightly Review," which he afterwards collected in his epoch-making little book.

Thanks to Bagehot, we have now realised that the British constitution was not in the eighteenth century, and is not now, based on a system of "checks and balances" between King, Lords and Commons, between monarchy, aristocracy, and democracy. In the eighteenth century the dominant force of the State was pretty equally represented in the two Houses of Parliament. Checks and balances there were, and are, in the play of the constitution, but not operating in the way supposed by Montesquieu or by Blackstone. Nor is there any such separation between the executive and the legislative powers as that which forms the distinguishing mark of the American constitution. On the contrary, the keynote of the British constitution is the intimate relation between, the interdependence of, the executive and the legislature.

This it is that differentiates from other forms of constitution, what we call parliamentary government, and what Dr. Redlich and other German writers have christened "Parlamentarismus." And its characteristic feature, the indispensable condition of its working, is the Cabinet.

What, then, is the Cabinet?[1] It consists of those members of the King's Ministry who are summoned to attend Cabinet meetings. The Secretaries of State and the holders of the most important ministerial offices are always included in the Cabinet, but there are some offices, such as those of Postmaster-General and Chief Commissioner of Works, of which the holders sometimes are, and sometimes are not Cabinet Ministers. The chief member of the Ministry, who is called the Prime Minister, summons and presides at Cabinet meetings. Until quite recently the Prime Minister was not officially recognised as such, and his title still indicates position or precedence rather than office.

An excellent description of the Ministry, as constituted under the Cabinet system, is to be found in Macaulay,[2] and there are so many things which "every schoolboy" knows are to be found in Macaulay, but on which an educated man often experiences difficulty in laying his finger at short notice, that one may be pardoned for transcribing a well-known passage. Some of the statements apply exclusively, or specially, to that portion of the Ministry which constitutes the Cabinet.

"The Ministry is, in fact, a committee of leading members of the two Houses. It is nominated by the Crown, but it consists exclusively of statesmen whose opinions on the pressing questions of the time agree, in the main, with the opinion of the majority of the House of Commons. Among the members of this committee are distributed the great departments of the administration. Each Minister conducts the ordinary business of his own office without reference to his colleagues. But the most important business of every office, and especially such business as is likely to be the subject of discussion in Parliament, is brought under the consideration of the whole Ministry. In Parliament the Ministers are bound to act as one man on all questions relating to the executive government. If one of them diverts from the rest on a question too important to admit of compromise, it is his duty to retire. While the Ministers retain the confidence of the parliamentary majority, that majority supports them against opposition, and rejects every motion which reflects on them or is likely to embarrass them If they forfeit that confidence, if the parliamentary majority is dissatisfied with the way in which patronage is

[1] The best account of the Cabinet system is, perhaps, that given in Mr. Morley's monograph on Walpole, ch. VII. But there are good accounts elsewhere, notably in *Sidney Low*'s "Government of England."

[2] History, ch. XX.

distributed, with the way in which the prerogative of mercy is used, with the conduct of foreign affairs, with the conduct of a war, the remedy is simple. It is not necessary that the Commons should take on themselves the business of administration, that they should request the Crown to make this man a bishop and that man a judge, to pardon one criminal and to execute another, to negotiate a treaty on a particular basis or to send an expedition to a particular place. They have merely to declare that they have ceased to trust the Ministry, and to ask for a Ministry which they can trust."

Bagehot has called the Cabinet a committee of the House of Commons. But his description is not so accurate as that of Macaulay. The Cabinet is an informal committee of the Privy Council. The representatives of the Cabinet in the House of Commons perform for that House many of the functions which are performed for other bodies by an executive committee, but the Cabinet is not appointed by the House. The Prime Minister is appointed by the King. Appointed, but not selected, for the Prime Minister must be the person whom the dominant political party agree to accept as their leader. If there is any doubt on the question, the solution is reached by informal discussions or experimental attempts to form a Ministry. Having been appointed, the Prime Minister selects his colleagues, and submits their names for appointment by the King. If a Prime Minister resigns, it depends on his successor whether his colleagues, or any of them, remain in office. But a Prime Minister may survive the resignation of many colleagues.

This is not an elementary treatise on the constitution, and therefore it is unnecessary to point out how slowly and gradually these principles have been evolved, and in how many respects the Cabinet of the present day differs from the Cabinet of the eighteenth century. From the point of view of parliamentary history what is important to note is that the Cabinet system was the eighteenth-century solution of the problem which distracted the whole of the seventeenth century. The conflict of the seventeenth century was between privilege and prerogative. The question was whether the King should govern, or whether Parliament should govern. Strafford, the strong minister of a weak king, tried to govern

without Parliament, and failed. The Long Parliament tried to govern without a king, and failed. The great rule of Cromwell was a series of failures to reconcile the authority of the "single person" with the authority of Parliament. After the Restoration, the revived monarchical régime broke down under James II. The "noiseless revolution," which brought about the modern system, began under William III between the years 1693 and 1696, and the system then initiated was developed under the Hanoverian dynasty by Walpole and his successors. The executive authority of the King was put in commission, and it was arranged that the commissioners should be members of the legislative body to whom they are responsible. The King has receded into the background. His office remains as a potent symbol of dignity, authority, and continuity. In his individual capacity he can exercise enormous influence by wise and timely counsel. But if he should thrust his personal authority into the foreground he would throw the machine out of gear. The Ministry must govern.

How can the Ministry control the body on whose favour their existence depends? How can they prevent the supreme executive council of the nation from being an unorganised, uncontrollable, irresponsible mob? The English answer is, by party machinery. It is this machinery that secures the necessary discipline. The Cabinet system presupposes a party system, and, more than that, a two-party system. This does not mean that there may not be individual members of the legislature independent of party, or that there may not be more than two parties in each House. But it does mean that there must be two main parties, one represented by the Treasury bench, and the other by the front opposition bench, and that the party represented by the Treasury bench, must be able, with or without its allies, to control the majority of the House of Commons. The system also implies, for its efficient working, an experienced and responsible Opposition, a body of men whose leaders have held office in the past and may look forward to holding office in the future.

"Party," as defined by Burke in the classical passage on the subject,[1] "is a body of men united for promoting the national interest on some particular principle in which they are all agreed." The two great historic parties of Whigs and Tories were, as we all know, in existence before the Revolution of 1688, but it was not till long afterwards that the party machinery was developed. The physical construction of the House of Commons seems to lend itself naturally to the two-party system, except when one of the two parties has an overwhelming majority, and one is tempted to speculate what might have been the effects on the British constitution if the House of Commons had continued to occupy a circular building, like the Westminster Chapter House, or had established themselves, like Continental legislatures, in a building fashioned after the manner of a theatre. But it was not until some unknown date in the eighteenth century that the two opposing parties took their seats on opposite sides of the House. The story of the famous bet between Walpole and Pulteney is sometimes used as an argument that this practice existed in 1740. But in Coxe's version of the story there is nothing to show that Walpole's guinea was thrown *across the House.*

The "influence" which held the dominant party together, and secured their votes, for a long time took the gross and material form of places and bribes, and it was not until after 1836, when the division lists were first regularly published, that public opinion could be effectively brought to bear as the most efficient safeguard of party discipline.

In the present day the division lists are constantly and jealously scrutinised and carefully analysed, and the member who is slack in attendance or uncertain in his allegiance, is apt to be severely called to account by his constituents. Every facility is given him for the performances of his duties. The test of membership of a party is the acceptance of missives from the party whip, and the whips take care to send

[1] Thoughts on the Causes of the Present Discontents.

round notices whenever an important division is expected. A member cannot be expected to stay long in the House itself; he has quite enough to occupy him in the committee room, in the library, in the smoking room, on the terrace, or elsewhere. But when the division bell rings he hurries to the House, and is told by his whip whether he is an "Aye" or a "No." Sometimes he is told that party tellers have not been put on, and that he can vote as he pleases. But open questions are not popular; they compel a member to think for himself, which is always troublesome. Not that a member is a mere pawn in the game, but the number of questions which even a member of Parliament has leisure and capacity to think out for himself is necessarily limited. And it is only through machinery of the kind described that a member of Parliament can reconcile his independence as a rational being with the efficiency of a disciplined and organised body.

If we ask whether the constitutional changes involved in the growth and development of the Cabinet system and the party system are reflected by any marked or striking alterations of parliamentary procedure, the answer must be in the negative. These changes, important as they were, were silent and gradual, and effect was given to them rather by the skilful adaptation of old procedure than by the introduction of new procedure. Forms devised for the protection of Parliament against the King were used for the protection of the minority against abuse of the power of the majority.

This third period of parliamentary history, which covers the reigns of the four Georges, was the golden age of parliamentary oratory, but it was not an age of great legislation. The territorial magnates, who as knights of the shires or members for pocket boroughs constituted the House of Commons, contented themselves in the main with formulating as Acts of Parliament rules for their own guidance as justices of the peace. From the point of view of parliamentary procedure also it was a period of conservatism. The great Speaker Arthur Onslow, during his thirty-three years of office,

jealously defended the privileges and traditions of the House against any innovation. His devoted admirer, John Hatsell, the Clerk of the House, compiled the four volumes of parliamentary precedents in which the rulings of his former chief are reverently enshrined. The forms recorded in the journals are stereotyped and are highly technical. It was an age of technicalities. Special pleaders split hairs in judicial proceedings. Conveyancers span out their subtleties to inordinate length in legal chambers. Form was worshipped for its own sake, often to the detriment of substance. The same spirit showed itself in the proceedings of Parliament. It was, as Dr. Redlich has said, the Alexandrian epoch of parliamentary procedure. The principles evolved in creative and revolutionary periods were laboriously reduced to form, and in the process life and growth were often arrested and tendencies were ossified into dogmas. Parliamentary procedure became a mystery, unintelligible except to the initiated, and the officials who formulated the rules were not anxious that their knowledge should be too widely shared. Forms were multiplied. No less than eighteen separate questions, representing successive stages, had to be put and decided on every bill. These things were possible in the leisurely eighteenth century. There was no great popular demand for legislation; constituents did not put pressure on members to speak. Debates were thinly attended and reported scantily, if at all. Government was government by party, but the parties were usually groups or portions of the same ruling class, assailing each other with great vehemence of language, but not really divided from each other by profound differences of political principle. Politics were a game, which would be spoilt if the rules of the game were not observed.

1832 changed all this, not suddenly, but inevitably. Before St. Stephen's Chapel was gutted by the fire of 1834 its occupants became aware of a difference in its atmosphere. The keen wind of democracy had begun to whistle through the venerable and old-fashioned edifice. The representatives of the newly enfranchised middle classes took legislation

and administration more seriously and earnestly than their predecessors, and set themselves busily to explore and sweep out dusty corners, to pull down, to rebuild and to add on. The task of legislation, owing to the growing complexity of administration, had to be undertaken by the Government instead of being left to private members. The problems with which Parliament had to deal increased rapidly in number and variety. Mr. Gladstone, in a speech of 1882, drew an interesting comparison between the ways of the unreformed House of Commons and those of the House he was then addressing. "I well remember in my boyhood," he said, "when sitting in the gallery of the House which " was burnt down, that the same things used to take place " as now take place in the other House of Parliament, " namely, that between 6 and 7 o'clock the House, as a " matter of course, had disposed of its business and was " permitted to adjourn." And he attributed the growth of business in the House mainly to three causes, the enlargement of the Empire, the extension of trade relations, and the enlargement of the conception of the functions of Government.

But before Mr. Gladstone spoke in 1882 another new and potent element of disturbance had made itself felt in the procedure of the House of Commons. The existence of every Government, and specially of every constitutional Government, depends on the observance of understandings, which proceed on the assumption of a general desire to make the machine work. If these understandings are not observed, the wheels of the machine are stopped, and the machinery may be brought to a standstill. Any member of the House with sufficient knowledge of its machinery to see how it can be made to work awry, with sufficient tenacity, and with adequate following, can produce that result. This mode of handling the parliamentary machine is popularly called obstruction, and, as everyone knows, the most expert master of the craft was the great Irish leader, Parnell. After 1877 the best mode of meeting obstruc-

tion became the most instant problem of parliamentary procedure.

The theory that the main duty of Parliament, and especially of the House of Commons, was to check and oppose the King, which was a reality in the seventeenth century, was still a potent tradition in the days of Arthur Onslow, but though vitalised subsequently by George the Third's efforts at personal government, gradually became a mere survival. Under the developed system of Cabinet government the old form of opposition between Parliament and the Crown has vanished; the executive authority necessarily depends on, and represents, the majority of the House of Commons. Critics of the English system of parliamentary government, especially German critics, have often spoken of the English Cabinet system and of the English party system as products of the eighteenth century oligarchy, and have predicted that they would not survive the advent of democracy. So far their predictions have not been realized. The English parliamentary system has not only survived in its own home, but has been extended to the new democracies of Canada, of Australia and of New Zealand. It is true that the system has undergone profound changes in its adaptation to new conditions. The increase in the number of departments, and in the amount both of departmental and of parliamentary work, imposes a severe strain on the Cabinet. This increase involves many risks. There is a risk of an overgrown Cabinet delegating its functions to an inner body. There is a risk of insufficient central supervision over departmental work. There is a risk of insufficient co-operation between the great departmental chiefs in the general work of government. And there is one strain under which the Cabinet system, as we understand it, would almost certainly break down. It is difficult to see how the executive supremacy or the exclusive and collective responsibility of the Cabinet could survive the juxta-position of another committee or council, sharing the responsibility for important National or Imperial duties, and having, it may be, the

Prime Minister as its chief. Again the political parties of the twentieth century are wholly different things from the little family cliques who alternated in the exercise of power and patronage during the eighteenth century. The large loosely-knit party of modern democracy, which has often coalesced under a temporary stress or for a temporary purpose, always has a tendency to resolve itself, after the Continental fashion, into groups with separate aims and separate organization, and claiming an independence incompatible with the maintenance of the two-party system on which, as has been said above, the effective working of our parliamentary machinery depends. And, lastly, the absence of old traditions, the absence of a territorial aristocracy, and the remoteness of the Crown, make parliamentary government in the self-governing Colonies a very different thing from parliamentary government in the United Kingdom. Which of the two great political inventions of the English race, the parliamentary system of the United Kingdom or the Presidential system of the United States, is better suited to modern democracy, may be one of the problems of the future.

Meanwhile the main problems of parliamentary procedure under existing conditions are two: on the one hand, how to find time within limited parliamentary hours for disposing of the growing mass of business which devolves on the Government; and on the other hand, how to reconcile the legitimate demands of the Government with the legitimate rights of the minority, the despatch of business with the duties of Parliament as a grand inquest of the nation at which all public questions of real importance find opportunity for adequate discussion. It is the difficulty and urgency of these problems that has brought the subject of parliamentary procedure so often to the front since 1832. Before that date the law of Parliament was almost wholly customary law. Since that date it has been largely modified by enacted law, for the standing orders of each House stand in the same relation to its customary law as Acts of Parlia-

ment stand to the common law of the country. Of the ninety-six standing orders which regulate the public business of the House of Commons, only three, dealing with finance, date from before 1832. Since that date there have been some fifteen committees on the public procedure of the House, besides those devoted to private bill procedure. Mr. Balfour's reform of public procedure in 1902 was not preceded by any such committee, but Sir Henry Campbell Bannerman, in 1906, reverted to the older practice, and both the new time table which, at his instance, the House of Commons adopted in the spring of that year, and the extension of the system of standing committees for legislative purposes which was made in the spring of 1907, were based on recommendations embodied in reports of a select committee.

Dr. Redlich gives for the first time a full and complete account of the changes which have taken place in parliamentary procedure since 1832, and a most instructive and interesting narrative it is. The first part of his work is entirely historical and traces the development of parliamentary procedure as a whole from the beginning of the mediæval Parliament to the year 1905. The second part is partly descriptive and partly historical. It takes separately each feature of parliamentary procedure, describes its existing condition, and appends a historical summary showing how that condition has been reached. The result is a book which is indispensable to the student of English parliamentary institutions.

C. P. ILBERT

AUTHOR'S INTRODUCTION

IN saying a few words to speed this work on its way, I do not feel bound to offer any elaborate proof of the importance of its subject. No one who is not blind to the political development of our time can have failed to perceive that parliamentary government has again, even to a greater extent than in any former day, become the chief problem in the science of public law—in the theory and practice of politics. Nor can there be any doubt that the central element of the problem, as it now presents itself, is the manner in which a parliament is to discharge the function of enabling the state to perform its regular *work*. On the other hand, it may not be amiss to give a short account of the genesis of the book.

With the lapse of time the attitude both of science and of practical politics to parliamentary government has undergone a material change. In the earlier part of the nineteenth century it was chiefly the first principles of representative constitutions that were under investigation. Both in the field of theory and in that of action parliamentary government was engaged in a life and death struggle with the forces of absolutism; but even in the great states of Central Europe this struggle has long been closed, and with it came to an end the first, one might almost say the heroic, period of Continental parliamentarism. But only the first. New phenomena made their appearance in the life of modern states, which were at once set down as serious defects inherent in the system of representative government, although on closer inspection they might often have been found to be results of incompleteness in parliamentary institutions, of pseudo-

parliamentary government, or, again, to have been inevitable consequences of insufficient preparedness on the part of the nation in moral and mental qualities, or in the stage of its civilisation, which prevented the representative principle from having fair play. The tide in the fortunes of the idea of parliamentary government reached its flood in the middle years of the last century, and in the last few decades has been suffering an unavoidable ebb. It is, however, remarkable that it has not been from the historic opponents of self-government that faith in parliaments has received the most grievous blows. These have come from the great popular parties—the Nationalists, the Labour Parties, the Socialists. It was, moreover, within the parliaments themselves that the worst of all adversaries arose, in the shape of organised, intentional obstruction—the systematic, often violent, negation of the parliamentary idea by the very representatives of the people. In one after another of the most diverse states it sprang up, threatening to deprive representative assemblies of their capacity for work, and challenging anew the right of parliaments to exist. The problem of *procedure* then naturally forced its way to the front. Its importance, hitherto overlooked both in theory and practice, began to be regarded, especially in countries with but short parliamentary traditions, even more highly than it deserved. Not a few politicians hoped to find a remedy for grave constitutional defects in the simple adoption of cleverly devised alterations in parliamentary tactics.

It is no accident that the attack by obstruction upon the parliamentary system first took shape in England, the native country of the conception of representative government. It is no less instructive that it was in the House of Commons that the poison first found its effective antidote. But in England they were not content with merely overthrowing obstruction. It had long been evident there that the historically developed machinery, the venerable rules of the House of Commons, needed a thorough remodelling if Parliament wished to avoid the pitfall of inefficiency. The

system of perfected parliamentary government, built up on a democratic franchise, imperiously demanded that procedure should be adjusted to the living constitution of a great country. The remarkable political and legal process of reform by which the adjustment has been made has gone far beyond what was required for merely suppressing obstruction; but it has, up to the present time, been practically ignored upon the continent of Europe.

A desire to describe the course of this reform was the germ out of which my book has grown. In carrying out my plan I have been led far beyond the bounds I had at first set before myself. With the original study in political history I have associated a full and comprehensive account of the existing order of business and the practical procedure of the House of Commons. A careful consideration of the matter convinced me that this extension was absolutely necessary. I had known in advance that there was practically no English book dealing with the history of parliamentary procedure; and without knowledge of the history of the subject matter it is useless to attempt truly to understand existing arrangements and modern procedure. There is a striking proof of this. The celebrated work by Sir T. Erskine May, though often translated, has given but little assistance on the Continent to the scientific treatment of the problem of parliamentary government. His book is a pattern of thoroughness, care and accuracy; and nobody would venture to question the fact that it is, on its own ground, of inestimable value. But through all its revisions it has remained what it was at first—a guide to English parliamentary practice. Treatment of the order of business from the point of view of theory or of historical development was quite foreign to its plan.

My object all through has been entirely different. It has been my aim to examine the law and practice of English parliamentary procedure as the expression of the historical and national characteristics of the English parliamentary system, both in its different stages of growth and

in connection with the growth of the constitution. My detailed researches led to the expansion of my first plan into an attempt to arrive at the results of such an examination.

I foresaw from the first the wide extent of the material which had to be used, and its intractable nature has made it difficult to devise an arrangement presenting it from the desired point of view. I hope the manner in which I have solved the problem may meet with approval. I may refer to the Introduction and to the first part of Book II for particulars as to arrangement and authorities. It may be permitted to me to observe that the historical survey of the development of English parliamentary procedure, contained in Book I is the first attempt, either German or English, at such an account, taken from original sources. For the first time full use has been made not only of debates in Parliament, but also of one of the most important sources of information upon the English parliamentary system—the long series of reports presented to the House of Commons by the committees appointed during the nineteenth century on questions of procedure reform, with their accompanying minutes of the evidence taken before them.

I began by alluding to the widespread increase of mistrust in parliamentary government. Nowhere has the tendency to belittle parliaments been more marked than in countries where the German conception of the state has been adopted, both within and without the bounds of the present German Empire. This is, of course, in the main, a consequence of certain great historical events: in no other area has parliamentary government found such difficulty in taking root or entered so little into the popular idea of the state. One result of German mistrust, in my opinion, has been that in no single department of the theory of the modern state has German research been so unfruitful as in that of parliamentary government. However instructive it might be to speak the whole truth as to some recent theories on the subject, I do not propose here to say a word about them. But quite apart from this, how little, for example, has

been attempted in the way of historical investigation into German parliamentary systems, what a gap would be filled by a history of political parties in Germany and their influence upon the development of representative constitutions!

An investigation of the reasons why so little has been done would lead us too far. I only mention it for the purpose of pointing out that there is here a most important task for German political philosophy still to perform, one the accomplishment of which is a veritable state necessity. No doubt the undertaking is one of enormous magnitude. A study of representative government as the expression of the sovereignty of the people, if it really embraced the whole depth and breadth of the subject, would involve the consideration of a process of development which has long since carried with it all civilised nations. An estimate of the effect of this development upon the political history and law of the separate states is a necessary preliminary to the formation of any general theory on the subject.

The present work should be regarded as a contribution to the fulfilment of this great undertaking, as an attempt, in the spheres of political history and law, to grasp the characteristics of parliamentary government in its native land and from the point of view of procedure. Though the adoption of such a point of view may entail the necessity of passing over or treating lightly many distinctive features, it has the inestimable advantage of providing a firm foundation in the legal character of the forms and principles which have to be considered.

Any systematic attempt to investigate the British constitution in state and parliament at the beginning of the nineteenth century brings us at once face to face with formidable difficulties; for this constitution was the fruit of a thousand years of history and the product of a nation whose character unites in the strangest way stubborn conservatism as to form with an irresistible instinct for the constant development of its institutions. It was the result of the whole history of the Anglo-Norman state, no ordered scheme planned by

one powerful mind, but the consequence of countless forces and conceptions successively active in the nation and of innumerable necessities and chances in its life. Side by side with recorded legislation stands custom, reaching down into the inmost depths of the nation's history, and forming the source — primary, inexhaustible and indestructible — of English constitutional law. An infinitely complex amalgam of institutions and principles, the British constitution is naturally devoid of all comprehensive system; yet to the enquirer who brings with him historical sense and political insight this mass of seeming inconsistencies is perfectly intelligible. To no other, however, will it yield its secret; none but those who have studied it in its political history can measure the true value or significance of its institutions and principles, or assign to them their fitting places in the actual life of the state. By the historical method alone can the existing public law of England be grasped, or its positive legal principles formulated; only thus can any conclusions be drawn worthy of inclusion in a general theory of state systems.

The comparatively small section of public law which forms the subject of this work, the procedure of the House of Commons, is a living, organic part of the British constitution; as such, it must display the same structure as the whole. An account of it is therefore exposed to the same difficulties as would have to be confronted in giving a general description of constitutional law and of the powers of Parliament. The order of business[1] in the House of Commons which the nineteenth century received from the past was, like Parliament itself, the growth of five centuries; looked at from the point of view of legal history, it was

[1 I have felt obliged at times to use the phrase *order of business* as an equivalent for the German *Geschaftsordnung*; there is no English word or phrase precisely conveying the notion of the whole system of regulations, written and unwritten, under which business is to be conducted. The need has seemed especially pressing in dealing with the phrase *die historische Geschäftsordnung*, employed by the author to denote the system in use before the modern stream of standing orders began to flow.—*Note by translator.*]

pure customary law. It was not laid down in systematic enactments, still less in a code of parliamentary procedure; it rested on living tradition, on concrete precedents found in the journals of the House, and on definite resolutions, which, as a rule, were of a declaratory, not enacting, character. Beginning about the middle of the sixteenth century, there have been preserved an almost unbroken series of the journals of the House of Commons and numerous reports of its debates. The very earliest of these show the House equipped with a set of forms and rules which had been laid down at intervals during long periods of years, many of them in a manner now unascertainable; and these forms were so complete and so firmly established that generations of parliamentary workers passed away without making any essential change in the apparatus which they used. After the Revolution, with the ever-increasing elaboration of the nation's parliamentary life and the growth in political power of the House of Commons, we can watch procedure being fashioned into an instrument for maintaining the supremacy of Parliament; but for this purpose all that was requisite was a careful and consistent adjustment of existing law by means of usage, without any considerable innovation. The period of oligarchic parliamentary government which followed the Revolution was marked by a strict formal conservatism, not only in the affairs of the nation at large but also in parliamentary procedure. Permanence of form, however, did not prevent the rules being moulded to suit their new political content by development within the old forms and arrangements.

Until well into the nineteenth century procedure retained its purely customary character. The historic order of business of the House of Commons was never affected, either as a whole or in its separate parts, by juristic speculation or political theory. Its origin and growth, the cautious, often imperceptible, transformations which it underwent, sprang from practical wants, expressed the actual facts of political power and of historic constitutional relations.

The rules under which the House of Commons worked at the turn of the century were an inheritance won by the wisdom of its predecessors, serviceable only by dint of use, and in many respects worn out and antiquated.

With this point of time we reach the threshold of the great period of reform. During the preceding century and a half the nation had given so striking a manifestation of its power to remain on the same lines of legal and constitutional action, that it had been possible for the greatest of English constitutional thinkers, Edmund Burke, to take its constancy as the basis of his philosophy of the state. But at the end of the eighteenth century the pressure of social and economical changes, which had slowly ripened, gave birth to a new era, during which the conservatism so characteristic of the English nation had to yield at all points to a newly-acquired capacity for reform. The source of the direction and power of this new movement may be indicated in one word: it was the spirit of *Democracy*, which in the nineteenth century recast every part of the ancient English state. When, however, in our survey of the result of the almost unlimited range of the reforms effected, we fix our attention upon the constitution in the strict sense of the term, namely, the organisation of the power of the state, we cannot fail to be struck with one most remarkable fact. In spite of the magnitude of the changes in the composition of Parliament and the right of suffrage, not a single new principle has been introduced into the system of parliamentary government worked out in the eighteenth century. Whether we consider the purely legal or the political aspect of the relations between Crown, Government and Parliament, we shall find no essential alteration. The great organs of the state are the same to-day as they were two hundred years ago.

The Cabinet, which is really an executive committee of the majority in the two Houses of Parliament and nominally a committee of the King's Privy Council, is, as in the time of George I and George II, the sum total, the

focus of all political power: now, as then, it unites in fact all the theoretical rights and privileges of the Crown with the power of guiding Parliament derived from its possession of the confidence of the majority. None the less the constitutional and political rights of the Cabinet have undergone a fundamental change. Here we can only discuss at length one momentous aspect of this change, that shown in the relation of the Government, the Cabinet, to the House of Commons, as expressed by the rules of business. The Cabinet is at the present day as much unknown to English positive law as it was two centuries ago, when a member of the House rose to complain of the unconstitutional existence of such a body.[1] Nor has the customary law of Parliament developed any principle expressly recognising or defining a legal position for the Government in the House of Commons. Until quite recent times it was always emphatically laid down that on the floor of the House all members were equal, both as regards privilege and as regards participation in parliamentary work. Constitutionally speaking, there are to this day in the House of Commons no distinctions between members. There is no Government appearing as such, and this is indicated by the absence of the separate ministerial bench which is found in Continental parliaments. In all other respects, too, the fundamental constitutional principles and forms of Government action in Parliament are the same as they were when the system of parliamentary Cabinet government originated.

Here again, at the first glance, nothing appears changed. The legal relations of the two Houses of Parliament, the functions they discharge, have remained essentially the same. Yet in Parliament, too, an extraordinary and comprehensive change has been effected. During the period from

[1] *Hearn*, "The Government of England," p. 124: "The Cabinet is a body unknown to the law." *Taylor*, "The Origin and Growth of the English Constitution," vol. ii., p. 437. "From a strictly legal standpoint the Cabinet is a mere phantom, which passes between the Parliament and the Crown, impressing the irresistible will of the one upon the other."

1832 to the beginning of the twentieth century a profound alteration in the political structure of the Cabinet, in its inner relation to Parliament and to parliamentary work, took place, and simultaneously a complete transformation and reform in the parliamentary order of business was carried out. The two things stand in the relation of cause and effect. By the alteration in its rules the historic procedure of Parliament, which was based almost entirely upon tradition, was subjected to a modification worthy of being placed side by side with the great changes in the franchise and the reforms connected with them. The fundamental notion underlying the change was, to anticipate one of the chief conclusions arrived at in the present work, the endeavour to adapt the regulation and carrying out of parliamentary work to the fully matured system of party government. Both the original impulse in the direction of procedure reform and the continuous driving power which forced it on came from the universal recognition of the fact that the democratisation of the House of Commons called for a rearrangement of its work. But the course of events soon proved that the modification of the system of party government, which had been silently proceeding at the same time, had also to be taken into account. Parliament had been popularised by successive extensions of the suffrage, and had now to conduct the business of a great country with forty millions of inhabitants, the centre of a world empire of unprecedented extent; this business had long been concentrated in the hands of a Government responsible exclusively and directly to the House of Commons; the old rules and arrangements when applied to the entirely changed political and constitutional conditions, and to the enormously enhanced demands upon the capacity of parliamentary institutions, had entirely broken down. The need for framing a new and adequate system became too urgent to be evaded. *For the first time procedure came to be recognised as an independent problem in the spheres of political life, of parliamentary law and of the constitution itself.* Before long,

too, an entirely new method of party warfare led to the further discovery that the very existence of a parliament rests on its rules of business as a foundation, and that, in the last resort, its whole energy may come to depend upon the correct solution of the problem of procedure. And thereupon, with all the political intrepidity and prudent directness of aim born of many hundred years of self-government, the English nation faced the task of reform. The result was a new order of business in the House of Commons. True, even in this, the great historic forms of parliamentary procedure have been retained without change; for they are the expression of the fundamental constitutional order, which has not been affected. None the less is there a close connection between the new parliamentary basis established in 1832 and the new apparatus which the House of Commons has constructed for its work. The connection, moreover, is of a *political* nature; for it rests on the adaptability of the new rules and arrangements to the changed political character of the House and to the great task of self-government through the medium of a democratic House of Commons. But the connection is no longer organic in the sense in which the historic order of business was an organic part of the old constitution of Parliament. The new parliamentary procedure is not customary law, but enacted law; it is the result of methodical reform, systematically worked out from the point of view of political utility; it is justified by the fact that in a democratically elected representative assembly, comprising several parties, the order of business constitutes a problem in itself, to be solved on its own merits.

A peculiar character is attached to the subject of procedure reform by reason of its dealing with a conscious transformation of the law of the House by *autonomous* legislation. As such it has been effected entirely on the floor of the House, not by acts of parliament, and, of course, without the interference of any element outside Parliament: even public opinion has had but little influence.

This may account, in some degree, for the lack of attention given to the subject compared with that given to other modern changes in the British constitution which have been less important in their consequences. Still more effective in preventing any general or detailed comprehension of what has been taking place has been the highly technical character of the alterations made. It is, therefore, not surprising that even in England no exhaustive account of them has yet appeared. Still less is it to be wondered at that on the Continent there has been no explanation of the methods and results of this important political and constitutional action of the House of Commons. The aim of this work is to give, first a history of this reconstruction, and then a comprehensive account of its product, the order of business in the House of Commons as it exists at this day.

It might appear that the expression "order of business" would give a sufficient description of the matter which is here taken as the subject for treatment. But a little consideration will show the necessity for a more exact description, and an explicit statement of the precise problem in the science of public law which is here to be dealt with. To begin with, the forms and rules which constitute the order of business of the House of Commons are a portion of the law of Parliament. The law of Parliament is the sum total of all legal propositions which concern Parliament as a whole, or its separate parts, or the relations of these parts one to another. Looked at in this way, the contents of the law of Parliament may be divided into three great heads: (1) the legal propositions on which the House of Commons rests, on the strength of which it exercises its functions; (2) the special law of the House of Lords; (3) the legal propositions which define the constitutional and political relations of the two Houses to one another and to what lies outside of them, *i.e.*, to the Crown, and the Courts of Justice. The problem here discussed comes under the first of these heads. The task undertaken is

the description of the *parliamentary procedure of the House of Commons*. The House of Lords has developed its own regulations for the business which it transacts in common with the other House, but it is apparent that these regulations need no scientific treatment; are, in fact, incapable of such. All the fundamental institutions of the historic procedure of the House of Lords have been developed on similar lines to those of the Lower House. Almost from the outset the position of political power occupied by the House of Commons and the extended sphere of the operations peculiar to it have had the effect of making it the field where all the test questions of vital concern to Parliament have been settled, where all constitutional problems raised by the growth of Parliament have been propounded and solved. Contrasted with it, the House of Lords, as might be expected from its hereditary character as the representative of the highest propertied class, has always embodied a stubborn adherence to tradition, an attitude which reduces to insignificance its capacity for constructive effort in constitutional affairs.

As to the third head, the limitation to be made is abundantly clear. The study of the order of business is, in its nature, nothing but the study of the forms of parliamentary action, both that of the assembly as a whole and that of each of its separate members. It follows, then, that the constitutional position of Parliament—that is to say, the sum of its legal privileges in the state and its legally settled relations to the other organs of the state—is a presupposition of the matter considered here, not a part of it: for the order of business, regarded logically, assumes the legal and political existence of Parliament. The institutions and rules which support this existence may be classified as the external law of Parliament; they must be assumed for our purpose, and need only be touched upon so far as necessary for the due comprehension of procedure.

It cannot be denied that this limitation of subject involves certain difficulties. There is one portion of the

external law of Parliament which on the one hand is inextricably bound up with the internal law, and on the other is a part of the foundation of the constitution of Parliament. This is the group of legal principles included under the name of *Privilege of Parliament*, the sum total of the special constitutional rights of the two Houses and their individual members. Although our plan does not include an independent and exhaustive treatment of Privilege, its connection with our immediate subject will lead us to undertake a somewhat detailed treatment of its leading features.

The study of the legal element of our problem must not lead us to overlook its specific political import. The order of business of every parliament forms an integral part of the positive public law of its country: the procedure of the House of Commons is, therefore, a section of English public law. But, at the same time, the order of business is the outcome of a particular political problem of the greatest importance. The rules and procedure of the House of Commons are intimately bound up with the fundamental political facts and notions which constitute the nucleus of living English public law.

Opportunities will arise in the historical section for bringing out the salient points of connection: and in the account of the existing procedure there will be many occasions for touching upon the characteristic political aspects of the House of Commons, though this will have to be done concisely; for without reference to these it is impossible fully to understand the internal law of Parliament. They are the only clues by which we can be led from a mere description of forms and legal principles to a comprehension of the applied mechanism and practice of the English parliamentary system. A summary and discussion from this point of view is placed at the end of the work, as that is the best place at which to discuss the theoretical questions which present themselves.

It is impossible to become acquainted with the *existing*

procedure of the House of Commons without investigating both the political and material motives, and the actual course of the reforms of which it is the result. The problem set before us is of the utmost importance in the theory of public law : and it does not consist merely in ascertaining the new circumstances and rules ; it includes the consideration of the reasons why, and the way in which, conservative England has been induced to carry out so drastic a change. For this purpose we are led to enquire how the old procedure which has been so deeply modified was brought into being. However complete the reforms of the nineteenth century may have been, the procedure remains a thoroughly English piece of construction, it has not lost the ancient Gothic style. Far from it ; the rebuilding which has taken place has left the historic foundations untouched wherever they are capable of supporting the superstructure ; it has left many a wing of the rambling fabric with scrolls and ornaments unmutilated : if we are to feel at home in the new mansion we must learn all about the plans of the old.

The attempt to trace the history of the subject forms the first part of the account which follows : and it is necessary here to refer particularly to the distinctive developments in the two periods separated by the passing of the Reform Act of 1832. It is only in respect of the latter, that is to say, in general terms, the nineteenth century, that it is possible to speak of any methodical development of parliamentary mechanism.

The latest period, that of the rise and formation of modern parliamentary procedure, can be clearly described as a whole, and may be treated pragmatically. It is otherwise with the process of natural rise and organic building up of the old customary law of Parliament, as it appears in the historic order of business handed on to the reformed House of Commons. Here it is all-important to gain a general view of the great stages in the process of growth and the chief characteristics of its product, this historic order of

business. If this condition is fulfilled, the comprehension of the modern reform can be successfully linked with it. The performance of these two tasks will occupy, then, the first division of our description.

The second division comprises an explanation of the law and practice of parliamentary procedure as found at the present day. The historical account of each part will be given in the shape of a note or excursus on the corresponding section. The legal and politico-historical material, which our authorities provide for a study of the principles of our subject, can, as it seems to me, best be utilised in such appendices. It is to be hoped that the historic character of the modern procedure, notwithstanding all recent radical alterations, may thus receive full and fitting recognition.

The final part of the work attempts to sum up the theoretical results which flow from the account which has been given. The parliamentary system of England is not only the pioneer and type of all modern representative constitutions; it remains to this day the ripest, the most spontaneous and the most stable realisation of the great conception of representative self-government. We may, therefore, reasonably expect that the general scientific problem in public law presented by the mechanism of parliamentary work will receive from England its fullest and most instructive elucidation.

The present translation of my work is substantially a reproduction of the German edition published in 1905, the chief alteration being the omission of the chapter upon Private Bill procedure. But it has been necessary to take account of the important changes made since that date, and my readers are fortunate in being able to have these explained by Sir Courtenay Ilbert in a Supplementary Chapter. References to this chapter are given in notes to such passages as have been rendered out of date by the alterations made. Sir Courtenay Ilbert has further added to the value of this book by reading the proofs and kindly suggesting many improvements. My grateful thanks are due

to him for this and other help. I have further to thank Mr. J. Bradbury, of the Treasury, who has looked at the chapters on financial procedure and pointed out certain passages which needed modification.

When, at the end of my long and laborious task, I look back once more over the time spent upon it, I remember with the keenest gratitude the instructive and delightful days which my repeated visits to England have brought to me. I thankfully recall the many English lawyers, politicians and men of letters to whom I am bound by ties of friendship, or to whom my friends have guided my steps; they have all helped me by suggestions and by giving me a deeper insight into the truth of things than a study of the dead letter can ever supply. Without naming individuals, let me now thank all once more.

My final word of the most heartfelt gratitude must be for my dear friend Francis W. Hirst. I am especially indebted to him for the trouble he has taken in reading a large portion of the proof sheets of the original edition: by his criticisms and advice he has shown the most friendly interest in the production of my work, and has added a new debt to the many old ones incurred by me during the many years of our friendship.

JOSEF REDLICH

VIENNA,
August 1907

CONTENTS OF VOLUME I

PAGE

PREFACE iii

INTRODUCTION xxiii

BOOK I—HISTORICAL

PART I

THE GROWTH OF THE HISTORIC ORDER OF BUSINESS

CHAPTER I

GENERAL SURVEY 3

CHAPTER II

PROCEDURE IN THE ESTATES PARLIAMENT 6

CHAPTER III

THE DEVELOPMENT OF THE HISTORIC PROCEDURE OF PARLIAMENT 26

CHAPTER IV

THE ORDER OF BUSINESS AND THE DEVELOPMENT OF THE SYSTEM OF PARTY GOVERNMENT (1688–1832) ... 52

PART II

REFORMS IN PROCEDURE SINCE 1832

CHAPTER I

REFORM OF THE ANTIQUATED PROCEDURE (1832–1878)... 73

CHAPTER II

OBSTRUCTION BY THE IRISH NATIONALISTS AND ITS OVERTHROW (1877–1881) 133

CHAPTER III

THE URGENCY PROCEDURE AND THE INTRODUCTION OF THE CLOSURE (1881–1888) 164

CHAPTER IV

MR. BALFOUR'S PROCEDURE REFORMS (1888–1902) ... 186

BOOK I

HISTORICAL

PART I

The Growth of the Historic Order of Business[1]

CHAPTER I

General Survey

NO writer upon the historic procedure of the House of Commons can fail to point out its most striking feature—the great antiquity of the forms and rules on which it is based. Sir Reginald Palgrave, in his preface to the tenth edition of Sir Thomas Erskine May's classical treatise on "Parliamentary Practice," introduces his retrospect of the half century since the first appearance of the book with the words: "The parliamentary procedure of 1844 was essentially the procedure on which the House of Commons conducted business during the Long Parliament." The most recent historian of Parliament, Mr. Edward Porritt, takes his readers even further back than Sir Reginald Palgrave. In his most instructive work[2] he says: "The most remarkable fact in regard to the procedure of the House is the small change which has taken place since, in the reign of Henry VII,[3] enactment by bill superseded enactment by petition. It is not affirming too much to say that the last House of Commons which met in the old Chapel of S. Stephen's—that of the parliament in existence at the time of the fire of 1834—was following in its main lines the procedure which the Journals show to have been in use when, in 1547, the House migrated from the Chapter House of Westminster Abbey to the famous Chapel which Edward VI then assigned to the Commons

[1] For the authorities and literature on the history of parliamentary procedure down to 1832, see Book II., Part i.

[2] *Porritt*, "The Unreformed House of Commons," vol. i., p. 528.

[3] See, however, *infra*, p. 16.

for their meeting-place."[1] In this passage, the beginnings of the order of business which was in force at the time of the Reform bill are traced back yet another century: the critical step, too, is indicated by the taking of which parliamentary procedure, in the strict sense of the term, was brought to completion and assumed the form from which all subsequent changes in the conduct of business were developed. This step was the adoption of the bill as the exclusive technical form for the exercise of the great functions of Parliament. Procedure by bill is, to this day, the characteristic mark of the English parliamentary system and of all its descendants on both sides of the Atlantic. From the point of view of procedure this change may well be called the boundary between two great eras in parliamentary history. With the advent of the bill the individuality of the English parliament as a constitutional and political creation became complete: thenceforward, however many-sided its application and however extensive the sphere of its undertakings, the development of procedure moved on within the fixed form given to it by the bill. What lies before the introduction of procedure by bill must be regarded as the period of parliamentary antiquity: to speak more precisely, it was a period in which Parliament itself gradually rose from a mere assembly of Estates to a new and unique organisation for expressing the will of the whole state, and in which at the same time its procedure slowly and imperfectly shook off the character it had assumed during the Estates stage of its existence. The very name, *Petition*,

[1] For the history of the ancient Palace of Westminster, which in its origins goes back to Anglo-Saxon times, see the comprehensive work by *Brayley and Britton*, "History of the Ancient Palace of Westminster," 1836. In the period of the Estates, Parliament met at different places in London, and also elsewhere—for instance, in York, Winchester, Lincoln, Northampton, and other towns. And even under Charles I (1625) and Charles II (1665) Parliament was transferred to Oxford on account of the danger of plague. But since 1681 it has never met elsewhere than in Westminster Palace. The Chapter House of Westminster is described as "the ancient place" of the Commons as early as 1376 (*Rot. Parl.*, vol. ii, pp. 322, 363). After the fire of 1834, and until the completion of the new Westminster Palace (1852), the House of Commons met in the White Hall of the old Court of Requests, which had been temporarily adapted for the purpose.

of the form in which parliamentary action had been taken, and upon which it had been based, is a sufficient indication of the inferior position of Parliament in the earlier days.

We may then distinguish three periods in the growth of the historic order of business which, speaking approximately, are successive, but which cannot, of course, be sharply divided one from the other.

I. The first period is that of the Estates. It begins with their first meetings under Henry III and Edward I, and continues until the beginning of the journals of the House and the first contemporary reports of debates and proceedings, *i.e.*, till the middle of the sixteenth century. In this period again we have to distinguish between two parts: the period in which Petition is the sole form of parliamentary activity, and the period, from the first quarter of the fifteenth century onwards, in which Bill becomes the normal form.

II. In the second period Parliament begins to meet with regularity, the order of business proper is settled, and the procedure as a whole appears on its permanent fundamental lines. It covers the reigns of Queen Elizabeth and the first four sovereigns of the house of Stuart. To this period we may assign the framing of the whole historic order of business by the practice of the House of Commons. The only necessary qualification is that there can be no doubt that most of the fundamental elements of procedure date back much further than our knowledge of the proceedings of the House; in other words, their inception and earliest development belong to our first period.

III. The opening of the third period is marked by that great political landmark in the constitutional history of England—the Revolution. This ushers in the age of conservative parliamentary rule, by which the governing classes strove to retain and develop, for the maintenance of their own supremacy in the state, the sovereign position which Parliament had gained as against the Crown. The period closes with the carrying of the first extension of the franchise in 1832. With the meeting of the reformed House of Commons begins another era in the development of the order of business and procedure of the House organically connected with the political transformation of Parliament.

CHAPTER II

PROCEDURE IN THE ESTATES PARLIAMENT

IN the most ancient period of the history of Parliament *Petition* was, as has already been observed, the sole basis of parliamentary work.[1] This, like Parliament itself, grew in the first instance out of the conception of the nation as a body of Estates, and out of the idea that every subject must be at liberty to bring his grievances before the king, the highest source of law. It is, therefore, intimately connected with the original character of the *Parliamentum*, the *Magnum concilium*, as the royal court of final appeal where the king dispensed justice with the help of the barons.[2] As in the Teutonic states of the Continent, so also in England, it was the necessity of obtaining for the Crown express grants of taxes, to supplement the revenue derived from the incidents of feudal tenure, which caused the Estates to be summoned, and won for them the position they attained. From the time of Edward III it has been an established constitutional principle that the Commons possess the deciding voice in the grant of taxes. The necessity of their concurrence in imposing taxation had already been laid down in theory under Edward I when, in the summons to his great parliament of 1295, he solemnly announced as a political principle the maxim *ut quod omnes tangit ab omnibus approbetur*, a principle adopted through the Canon Law from the Corpus Juris Civilis;[3] and a statute of 14 Edward III proclaims

[1] The oldest document relating to parliamentary procedure, the *Modus tenendi parliamentum*, contains no reference to bills, and treats petition as the ordinary form of parliamentary business. See the section *De negotiis parliamenti* (p. 23, Hardy's edition); also on p. 45, "Parliamentum departiri non debet dummodo aliqua petitio pendeat indiscussa, vel, ad minus, ad quam non sit determinata responsio."

[2] See the lucid remarks by *Maitland* in the introduction to his edition of the Parliament Roll of 1305; "Memoranda de Parliamento, 1305" (Rolls series, vol. 98), pp. xlvii, lxxxi–lxxxix.

[3] See *Stubbs*, "Constitutional History," vol. ii., p. 133; vol. iii., pp. 270–275. The reference is to Cod. v. 59, 5. The above principle is stated in

without ambiguity that it was Parliament which had the right to grant taxes to the lord of the land.[1] It was an assumption underlying the Teutonic idea of kingship in general that the king should be able to supply his household and also the ordinary wants of the government of a mediæval state out of the funds supplied by the royal patrimony, the income from judicial fees and fines, and the incidents of feudal tenure. In England this assumption was stoutly maintained in theory and practice. The *Modus tenendi parliamentum* speaks without hesitation, "Rex non solebat petere auxilium de regno suo nisi pro guerra instanti, vel filios suos milites faciendo vel filias suas maritando"; these are the three well-known feudal aids. To meet any other extraordinary needs of the Crown, or the state, the vassals must be appealed to for a grant. The continuous warfare of the English monarchs made it into a rule that the king was unable, as the old formula ran, "to live of his own."[2]

During the fourteenth century the simultaneous gatherings of barons and prelates for the purpose of a High Court of Justice *(parliamentum)*, and of representative knights and burgesses, as deputies of the commonalty, for the consideration of grants of taxes, coalesced: the single assembly that resulted was Parliament in its permanent form.[3] This was

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the writs summoning the clergy to Parliament (*Stubbs*, "Select Charters," 1900, p. 485). As to the development of the rights of the spiritual and temporal barons in respect of taxation, see *Plehn's* remarks in his excellent work, "Der politische Charakter von Matthæus Parisiensis" (Leipzig, 1897), pp. 4–19, 61–71.

[1] "Statutes of the Realm," vol. i., p. 290 It is there provided that the nation shall be no more "charged, nor grieved to make any common aid or to sustain charge, if it be not by the common assent of the prelates, earls, barons and other great men, and commons of the realm, and that in the Parliament."

[2] Upon the rise and significance of this principle, see *Plehn, loc. cit.*, p. 62; *Stubbs*, "Constitutional History," vol. ii., p. 543 n. For the quotation from the *Modus tenendi parliamentum*, see *Stubbs*, "Select Charters," p. 512.

[3] The extraordinary variation in the meaning of the word *parliamentum* from its first use in the authorities (1265) down to the time of Richard II. is the best proof of the continuous change and growth in the idea of Parliament. An analogous obscurity, pervading the same period, affects our understanding of the application of the legislative acts promulgated according as they are described as Statutes, Ordinances, or Acts of Par-

one of the important consequences of the early centralisation of supreme justice in England. The conjunction of the royal law sittings and the appeals to the Commons for taxes afforded to those subjects who had been called together on financial business opportunities of bringing before the Crown and its Council their petitions for redress and assistance. These petitions dealt with personal, local or general needs, and at first, though presented during the time of the meeting of Parliament, came for the most part from without; but gradually the Estates as a whole began to lay petitions before the King in Parliament. It must not be forgotten that from the time of the very earliest meetings of the Estates the right of initiative, in the form of petition, was asserted by the barons and commons who had been summoned to meet the king. Petitions for the removal of national grievances go even farther back; the articles of the barons of 1215, the petition of 1258, the bill of articles presented at Lincoln in 1301, were all precedents for the ordinary petitions of the commons as a body, and these last became frequent from the middle of the fourteenth century. In respect to participation in the function of legislation, too, the commons, after no long interval from the institution of Parliament, were placed upon an equality with the barons. Thenceforward petitions of the *"povres gentz de la terre"* were the nucleus of the activity of Parliament; they formed, as Stubbs says, the basis of the conditions for money grants, and of nearly all administrative and statutory reforms.[1] Their variety even at this early stage points to the illimitable sphere of action which lay before Parliament when once it

liament. See *Parry*, "Parliaments and Councils of England," pp. xliii *sqq.*, also *Maitland*, "Mem. de Parl., 1305," Introduction, pp. lxi–lxxxix. On the different meanings of the word *parliamentum* in the thirteenth century, and the first half of the fourteenth, see *Pike*, "Constitutional History of the House of Lords," pp. 47–50.

[1] See *Stubbs*, "Constitutional History," vol. ii., pp. 599–613; also *Maitland*, "Mem. de Parl., 1305," Introduction, pp. lxvi–lxxv. In the Parliament Roll of 1305, edited by Maitland, the embryonic condition of the legislative initiative of the Commons can be seen. In this parliament all petitions are addressed to the "King and his Council." Most of them are concerned with complaints as to law or administration. But among them occur petitions of the Commons and Lords requesting assistance against general hardships, which had doubtless been drawn

had grown from a meeting of Estates into a single organ of the state.

Its sphere of action was yet further extended by the practice, which dates from the middle of the fourteenth century, of addressing to the King in Parliament petitions of a nature formerly addressed to the King in Council. These petitions were likewise, for the most part, concerned with national grievances, but at times they contained requests for special grants; they became one of the branches of parliamentary activity and are the roots out of which has grown the far-spreading private bill legislation of Parliament.[1]

The concurrence in the same persons of the right of petition and the power to grant taxes was the decisive matter in the next stage; it provided an irresistible lever by which the influence of the House of Commons was steadily increased, and is therefore not only the inexhaustible source of all its political power but also the clue to its whole constitutional development. The incessant wars of the English kings in the fourteenth and fifteenth centuries made into a rule what had been originally thought an exceptional case, namely, the need of special taxation; the summoning of Parliament was thereby converted into an indispensable and highly important act of government. From the beginning of the fifteenth century it has been an established principle that the redress of grievances must precede supply. In 1401 the Commons requested in plain terms from Henry IV a recognition of this rule. It is true that the King refused to comply with their demand, answering "that this mode of proceeding had not been seen or used in the time of his progenitors or predecessors, that they should have or know the answers to their petitions till they had shown

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up during the sitting of Parliament and in consequence of its deliberations. These petitions are not yet distinguished from the others which refer to the legal grievances of individuals. In the parliament of March 1340 the Commons were, for the first time, called upon to appoint a committee of eighteen members to consider petitions and to form into statutes the points and articles "*que sont perpetuels.*" (*Parry*, p. 110.)

[1] This is already remarked by *Elsynge* in his book, "The Manner of Holding Parliaments," 1660 (edition of 1768, p. 287). The description in the last chapter, "Receivers and Triers of Petitions," is even to this day readable. Cf. *Clifford*, "History of Private Bill Legislation," vol. i., pp. 276 *sqq.*

and done all their other business, whether making a grant or otherwise, and the King would not in any way change the good customs and usages made and used in ancient times."[1] The principle, though not formally laid down as law, nevertheless speedily became a customary right, inasmuch as the kings acquiesced in the practice adopted by the Commons, of putting off their grant of supply to the last day of the session.

We cannot undertake to follow out in detail the steps by which the financial position of the Commons was established, and pass on simply with the remark that in this period the internal organization of Parliament was completed. There can be no question that since the beginning of the reign of Edward III there has been a permanent separation into the two Houses of "Grantz" and "Commons."[2] There is documentary evidence to show that about 1376 the Chapter House of Westminster Abbey became the special meeting place of the Commons; also that the office of Speaker has been continuous from 1377; from this period, too, dates the regular appointment of the two chief executive officers of Parliament—the Clerk of the Crown in Parliament being first mentioned in 1316, and the special Clerk of the Commons in 1388;[3] finally, the summons of Parliament and the declaration of the cause of summons, by the King's Speech (called *loquela regis* in the *Modus tenendi parliamentum*) were institutions which by the end of this time had become constitutionally established.[4] One important

[1] *Rot. Parl.*, vol. iii., p. 458; see *Stubbs*, "Constitutional History," vol. ii., pp. 601, 605-609; vol. iii., p. 269 *sqq.* For the remarkable influence of this venerable principle upon reform in the order of business, even in the nineteenth century, see the proceedings before the procedure committee of 1854 (*infra*, Part ii., chap. i.).

[2] *Rot. Parl*, vol. ii., pp. 66, 67, 237: "It is difficult to prove when a permanent physical barrier was set between the two Houses; it is easy to show that the two assemblies were always distinct," says *Pike* ("Constitutional History of the House of Lords," p. 322). *Cf. Hallam*, "Middle Ages," vol. ii., pp. 37, 38.

[3] *Stubbs*, "Constitutional History," vol. iii., pp. 468, 469.

[4] The account given in the *Modus tenendi parliamentum* names two *clerici parliamenti* sitting among the judges to enrol all proceedings; but it is remarkable that it contains no reference to the Speaker: a Herald of Parliament and a *Hostiarius* (Serjeant-at-arms) are mentioned.

matter alone requires consideration in this place, namely, the effect upon the form and arrangement of parliamentary work produced by the extension of parliamentary powers. The changes that took place flowed from the fact that Petition could no longer keep pace with the increase in political and legislative efficiency of the House of Commons. It is true that Petition as a method of originating proceedings was elastic enough to cover the whole range of the legislative operations of the Commons; the documentary material as to the Estates parliaments, which has been so amply preserved for us in the Rolls of Parliament, proves that practically all the general legislation of this period depended on petitions. Further, it is clear that Petition could be made available for raising any possible grievance of the subject; complaints of denial of right could be lodged, dispensations or permissions to take legal action not authorised by common law could be prayed for or requests made for grants of local, special or individual rights. So great was the mass of individual petitions from the time of Edward III onwards, that the House of Lords, by one of its first procedure regulations, created special machinery for their classification. Before Parliament met, the King and his Council appointed officers called "Receivers and Triers of Petitions"; the former were at first officials of the Chancery (Masters in Chancery), who in early days ordinarily served as messengers between the two Houses, and, of course, were not members of the House of Lords;

There is no support elsewhere for what is stated in this work at some length about the clerks, or for the emphatic assertion of their independence of the judges and immediate subordination to king and parliament; this is, moreover, opposed to the long-continued insignificance of the position of these officials. The statements included under the head *De quinque clericis* (*Hardy's* edition, p. 17), assigning a special clerk to each of the five Estates of Parliament, are not confirmed by any other authority. Their special duty is stated to be that of taking down questions and answers for each of the separate Estates, and in addition they were to assist the two chief clerks. It is quite possible that a procedure, such as described in the *Modus*, may have been tried in the earliest parliaments of the fourteenth century, before Edward I's idea of summoning each Estate as a separate body received its final modification upon the consolidation of the two houses and the retirement of the minor clergy.

it was their duty to receive and collect the petitions. The Triers, on the other hand, were from the beginning Lords, or Judges appointed to assist the Lords in Parliament.[1] They examined the subject matter of the petitions and decided which were to be referred for consideration to the King in Council, which to the courts of common law, and which finally to the King in Parliament. Until the time of Henry IV, all petitions without exception were presented to the King, to the Chancellor or to the Lords, as the highest tribunals of judicature. In speaking of the parliament of 1305, Professor Maitland makes the striking observation: "A parliament is at this time rather an act than a body of persons. One cannot present a petition to a colloquy, to a debate."[2] The fact is that most of the petitions of the very earliest period were of the nature of complaints suitable for judicial treatment, brought before the King in Council: many were considered *coram rege* so long as the king himself acted judicially, but most of them came before the Chancellor. In these instances the Chancellor officiated as the agent of the king for the benefit of the poor and

[1] *Clifford*, "History of Private Bill Legislation," vol. i., pp. 271 *sqq.* Triers were first appointed at the Parliament in York, 6 Edward III. They were appointed "pour oyer et trier" or "to try out whether the remedies sought for were reasonable and fit to be propounded" There is a detailed discussion of the institution in *Elsynge*, c. viii. The first entry in the journal of the House of Lords (21 January 1509–10) shows the nomination of "Triours" and "Recepueurs" as an old-established custom. Special Receivers were appointed for petitions from England, Ireland, Wales, and Scotland, and also for such as came from "Gascoigne et des aultres terres et paiis de par de la la meere et des isles." The Triers were divided in the same way. The custom of appointing Triers and Receivers was retained for a long time after they ceased to perform any duties, and a proposal made in 1741 to dispense with it was rejected (*House of Lords Journals*, vol xxv., p. 577, 28 January, 1740–41). And so this formality was continued down to the year 1886. Professor Maitland has lately shown, in his excellent edition of the Roll of Parliament for 1305, that even at that time, under Edward I, officers of the Chancery were appointed Receivers at the beginning of Parliament; also that special "Auditors" (identical with the subsequent Triers) were appointed for the petitions from Gascony, Ireland and Scotland; they were, however, nearly all judges or officials, not barons. There is no mention of special Auditors for English petitions. See "Mem. de Parl., 1305," Introduction, pp. lvii–lx.

[2] "Mem. de Parl., 1305," Introduction, p. lxvii.

oppressed, giving them the sovereign's shelter and protection *per misericordiam dei* in cases for which the common law did not provide: and out of this method of dealing with petitions grew the celebrated extraordinary jurisdiction of the Chancellor, the origin of one great branch of English civil law, namely Equity.[1]

Before long, however, the character of the petitions changed. Parliament became a tangible organ of the state, and from the end of the fourteenth century many individuals and corporations began, in their endeavours to obtain special rights from the highest power, that of legislation, to apply to Parliament or, from the time of Henry IV, to the House of Commons alone.[2] Further, as we have already remarked, from the time of Edward III, petitions of a general nature relating to national grievances from the Commons to the Crown became frequent. In both classes the foundation is one and the same, a petition: the result is one and the same, an act of parliament. We see, then, that petitions addressed to the House by individuals containing requests for the alteration of an existing right, or the creation of a new right, as well as petitions addressed to the Crown by the Commons as a constituent part of Parliament, and containing requests for the creation of a new general right, or the alteration of an existing general right, led up to legislative acts, that is, were disposed of by agreement of the Commons with the Upper House and the Crown. Thus from the very beginning the two great branches of English legislation, private and public, had a common mode of initiation, namely, by petition.[3]

In the case of petitions which originated in the House of Commons, the precatory form became, of course, as time

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[1] See *Clifford*, "Private Bill Legislation," vol. i, pp. 270–288; also *Pollock*, "Expansion of the Common Law," pp. 53–80.

[2] See *Stubbs*, "Constitutional History," vol. iii., p. 478, and the passage quoted by him from *Rot. Parl*, vol. iii., p 565.

[3] The outward form of procedure in both cases was enrolment. The parchment containing the petition and the answer of the Crown was thenceforth preserved upon a roll. Petitions which were referred to the King's Council or to the Chancellor, by reason of their contents being legal complaints, even though they might have reached Parliament, were not enrolled, and ceased to form any part of the proceedings of Parliament.

went on, more and more inconsistent with the actual political and constitutional importance of the House. By its very nature it was open to serious objections from the Commons' point of view. It was no doubt the case that before long a connection was established between the grant of taxes to the Crown and the assent to the prayers of petitions; but even so there was a large element of uncertainty in the legislative procedure based upon petition. This procedure consisted (from 1343 onwards) in all the petitions of the Commons being collected in a "Roll" as a series of articles and handed to the King, the King's answers to the separate petitions being then appended by the Clerk. After the close of the parliament the enactments resulting from the concurrence of Commons and King were drawn up by the Judges in the form of petition and answer, and in that shape they were transcribed into the Statute Roll. Opportunity was thus given for material curtailment, even for destruction, of the share of the Commons in legislation. In the interval between two parliaments it was possible to suppress the entry of one or more of the petitions to which assent had been given, or the statute might make prejudicial alterations in the contents of a petition the prayer of which had been granted. Finally, even if the formulation had been carried out in a regular way, the enactment might be suspended or nullified by conditions appended to it by the Crown—provisoes. The documents supply us with many instances of such abuses.[1]

Further, a series of measures can be traced the object of which was to safeguard the Commons' share of legislation against these defects. They were not satisfied with making their grants of money conditional upon assent to the exact terms of their petitions, nor even with delaying their grants

[1] See *Stubbs*, vol. ii., pp. 603–609; vol. iii., pp. 84, 266–269. *Clifford*, vol. i, pp. 323 *sqq*. In 1401 there appears the following in the Roll of Parliament (2 H. 4, *Rot. Parl*, vol. iii., pp 457, 458): "Les ditz communes prierent a notre Sr. le roy que les bosoignes fait et a faires en cest Parlement soient enactez et engrossez devaunt le departir des justices tant come il les aient en leur memoire. A quoi leur feust responduz qe le clerk du parlement ferroit son devoir pur enacter et engrosser la substance du parlement par advis des justices et puis le monstrer au roy et as seigneurs en parlement pur savoir leur advis."

till they had received satisfactory answers; they began to prescribe the written form in which the answers were to be given, and demanded that the answers should be enrolled and sealed before the dismissal of Parliament. In the year 1379 a petition to this effect was assented to, but in the end no statute consequent upon it was drawn up.[1] There were numerous other complaints, down to the opening of the fifteenth century, that statutes did not agree with the answers given by the Crown, or that, even where they did agree, they had been rendered inoperative by ordinances of the king. It was not till the time of Henry V (1414) that a complete surrender was made by the Crown, and the Commons reached a position of full equality with the Lords in respect of legislation.[2] "At the close of the middle ages," says Stubbs, "the Commons were advisers and assentors, not merely petitioners, in matters of legislation, and in matters of political consideration their voice was as powerful as that of the Lords; they were no longer, if they had ever been, delegates, but senators acting on behalf of the whole nation."[3] Sir Edward Coke gives expression to the new legal conception of the position of the Commons in the words, "It is to be observed, though one be chosen

[1] *Rot. Parl.*, vol. iii., pp. 61, 62.

[2] In this year the Commons presented the following petition to the King: "Consideringe that the Commune of youre lond, the whiche that is, and ever hath be, a membre of youre Parlement, ben as well Assentirs as Peticioners, that fro this tyme foreward by compleynte of the Commune of eny myschief axkyng remedie by mouthe of their Speker for the Commune other ellys by petition writen, that ther never be no lawe made theruppon and engrosed as statut and lawe, nother by additions nother by diminucions by no manner of terme ne termes, the which that sholde chaunge the sentence and the entente axked by the Speker mouthe . . . . withoute assent of the forsaid Commune. Consideringe oure soverain lord, that it is not in no wyse the entente of your Communes zif hit so be that they axke you by spekyng, or by writyng, too thynges or three, or as manye as theym lust: But that ever it stande in the fredom of your hie Regalie to graunte whiche of thoo that you luste and to werune the remanent." The King's answer was that he "of his grace especial graunteth fro hens forth nothyng be enacted to the Peticions of his Commune that be contrarie of hir askying, wharby they shuld be bounde withoute their assent. Savyng alwey to our liege Lord his real prerogatif to graunte and denye what him lust of their petitions and askynges aforesaide."—(*Rot. Parl.*, vol. iv., p. 22.)

[3] "Constitutional History," vol. iii., p. 503.

for one particular county or borough, yet when he is returned and sits in Parliament he serveth for the whole realm."[1]

The incomplete success of the earlier efforts of the Commons to protect the results of their petitions served to direct attention to the true remedy, an improvement in the form of the legislative work of the House. It was only to be expected that an instrument such as Petition, derived from a period when Parliament was purely a meeting of Estates, would no longer be adequate to the needs of a period of constitutional government: and it is not only modern historians who consider the revolution by which the house of Lancaster was placed upon the throne as the epoch which marks the beginning of constitutional government in England; it was regarded as such by its contemporaries.[2]

It was felt, therefore, that the time had now come for a great reform in parliamentary procedure, the greatest which was then conceivable—the substitution of what were called Bills for Petitions: this was carried into effect under Henry V and Henry VI. It was much more than a technical improvement, for the essence of the change was that the basis for discussion and the matter for determination in the House were no longer requests, but drafts of the desired enactments free from any formula of asking. As may be inferred from their character, bills had first been adopted for legislative proposals brought forward at the instance of the Crown; it would in such cases be convenient to supply Parliament with drafts of the new statutes. The great step in advance was taken when petitioners who approached Parliament from without began to make use of the same form, and when the Commons began to replace their own petitions by complete drafts of laws—*billæ formam actus in*

[1] *Coke*, Fourth Institute, p. 14. The justification of this legal principle, which Coke derives from the old formula of the writ of election, like many other of the arguments from legal history by which this sturdy defender of the power of the House of Commons undertook to support his political actions, cannot be treated as convincing.

[2] The first person who endeavoured to explain the theoretical distinction between absolute and constitutional government was Sir John Fortescue, Henry VI's chancellor, in the first chapter of his work "On the Governance of England."

se continentes.[1] In this way a new common medium was found for all initiative in legislation; public and private petitions were replaced at the same time by public and private bills.[2] But a further extension took place. The judicial activity of the House in respect of accusations of high treason was from this time exercised in the shape of Bills of Attainder.[3] Finally the Bill was applied to the second great function of the Commons—the grant of taxes.

As the meetings of Parliament were originally thought of as independent assemblies of the separate Estates grants of money were at first taken in hand separately. A common procedure could only be adopted if Commons and Lords made their grants of money upon the same basis of taxation. This has been the case since the end of the reign of Richard II; from that time the regular course has been for the Commons to grant taxes in the form of an act of parliament, with the consent of the spiritual and temporal Lords.[4] As a rule, in the early days, the decision was pre-

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[1] In *Anson's* "Law and Custom of the Constitution," vol. i., p. 233, it is pointed out that a reminder of this origin is to be found in the formula used to this day for introducing a bill, "A bill entitled an Act &c." Anson instances, as a very early documentary proof of the adoption of the Bill by the Commons, the case in 1429 (*Rot. Parl.*, vol. iv., p. 359) in which the Commons pray "that the Bille which is passed by the Communes of yis present parlement . . . hit lyke unto ye King, by yadvys of the Lordys spirituell and temporell in yis present parlement, yat graciously hit may be answerd after the tenure and fourme yerof."

[2] See the earliest examples out of the Rolls of Parliament quoted by *Stubbs* ("Constitutional History," vol. iii., p. 480, n. 1). In the period of transition, down to the parliaments of Henry VII's reign, it became customary to describe private petitions as bills even though they began with an address to the House, and ended with a formal prayer. A survival from the earlier state of affairs remains to the present day in the rule that private bills must be accompanied by a petition from their promoters. In the case of public bills a trace of their descent from petitions may be found in the fact that petitions against them are allowed, and theoretically advocates are permitted to present these to the House. This right has not been exercised since the middle of the nineteenth century and may now be looked upon as obsolete. See *Clifford*, vol. i., pp. 270 *sqq.*

[3] A Bill of Attainder against Henry VI was passed in 1461; see *Stubbs*, "Constitutional History," vol. iii., p. 480.

[4] "The last instance of separate assent to taxes is in 18 Edward III. In later reports both Houses are jointly mentioned, often with the observation that 'they have advised in common.'" (*Gneist*, "Das englische Parlament," p. 155, English translation, 3rd edition (1889), p. 162.)

ceded by an exposition of the state of the finances by the Treasurer, and by conferences between Commons and Lords. There is very little record of the debates on these occasions. "The practice of three readings in each house, the possible speaking, suggestion of alterations and amendments, all the later etiquette of procedure on money bills, will be sought in vain in the rolls of the mediæval parliaments."[1]

Soon after the adoption of the Bill as a form of procedure it was applied to grants of money;[2] the earliest authentic reports of parliamentary debates in the sixteenth century treat money bills as old-established forms. Yet more significant, constitutionally, is the fact that, even in this ancient period of parliamentary history the Commons were given the essential and leading part in granting money; the old practice was that the Commons were first to be approached as to the grant of taxes, which were to include the contributions of the Lords, and that the latter were then to assent. This custom was founded on the consideration that it was not right that grants by the representatives of the least wealthy of the three Estates should be included in previous decisions of the temporal lords and the clergy. The principle received express recognition in 1407, when Henry IV first applied to the Lords for such aid as they thought necessary for the public service, and after receiving their reply summoned a deputation from the Commons to report their decision upon the grant by the Lords. The House of Commons remonstrated in the greatest agitation, and the King and Lords gave way. It was declared "that it should be lawful both for the Lords and Commons to commune amongst themselves in Parliament in absence of the King, of the state of the realm and of the remedy necessary for the same, but that neither house should make any report to the King of any grant nor of the discussions upon such grant before the Lords and Commons were of one assent and accord, and then in manner and form as

[1] *Stubbs*, "Constitutional History," vol. iii., p. 476.

[2] In the journal of the House of Lords for the first parliament of Henry VIII we read, "Adducta est a domo inferiori billa de concessione subsidii que lecta fuit semel cum proviso adjungendo pro mercatoribus de ly hansa theutonicorum." (*House of Lords Journals*, vol. i., p. 7)

had been accustomed."[1] It was further laid down at the same time by the King (Henry IV) that taxes were "by the Commons granted and by the Lords assented."[2] We have here the definite formulation of the privileged position of the Commons with reference to money bills as a fundamental proposition of constitutional law; its full significance was to appear in the future. But one inference may safely be drawn from the early recognition of the preponderance of the House of Commons on questions of supply, namely, that thenceforward the Lower House was no more considered as a delegation from an Estate but that it had come to represent the whole nation.[3] Side by side with the special right of the Commons as to supply stands the special right of the Lords to act as the highest court of law in the land; this, too, was finally defined at the end of the fourteenth or the beginning of the fifteenth century.

The foregoing account will have made clear what important results upon the constitutional position of the House of Commons flowed from the adoption of the bill as the basis of the whole of parliamentary procedure. It was not until this took place that the edifice of parliament was completed, and it stood out as a representation of the kingdom by means of two corporate bodies with equal

[1] *Rot. Parl.*, vol. iii., p. 611; *Stubbs*, "Constitutional History," vol. iii., pp. 62 and 63; *May*, "Parliamentary Practice," p. 554.

[2] See *Rot. Parl.*, vol. iii., p. 611; also *Hatsell's* "Precedents," vol. iii., 3rd edn., p. 134; 4th edn., p. 149.

[3] On this matter there is a striking summing up in the *Report on the Dignity of a Peer* (1820), which is a document giving the results of a minute investigation of the authorities on parliamentary history. "This declaration on the part of the King seems to have placed the King and the two Houses of Parliament each in the separate and independent situation in which they now respectively stand. Not, indeed, as a novelty, but as a solemn declaration in Parliament of what had been before accustomed, whatever proceedings of a contrary tendency might have taken place in former Parliaments: and this declaration in Parliament, with the Statute of the 15th of Edward II before noticed and the Statute passed in this Parliament, declaring who should be the electors of the knights of the shires, ... seem to have completely settled what was to be deemed the true constitution of the legislature of the kingdom, especially with respect to the important point of grant of aid to the King and with respect to the separate and distinct offices and duties of the two Houses of Parliament and their respective separate and independent proceedings." (*Report*, vol. i., p. 359.)

rights; nor was it till then that a sure foundation was laid for the equal, or in money matters preponderant, position of the House of Commons in legislation and politics. A few remarks will now suffice to complete our picture of parliamentary procedure in this period, all the more because our information as to the inner life of the House of Commons is, as already mentioned, only meagre. In no department of parliamentary activity have we any description of the debates, or indeed of any technical details as to the order of business in the proper sense of the expression. On the latter head, *i.e.*, more particularly as to the time sequence of the different subjects brought before Parliament, the *Modus tenendi parliamentum*, goes into great detail, but the sharpness of definition in the system of arrangement, based as it is on principles of justice and of the political importance of the various subjects, is enough to arouse a suspicion that it must be regarded as little more than a suggestion by the anonymous author. Stubbs, who rejects the work as in the main worthless, comes to the conclusion that after the Houses were properly constituted their first business was to consider the matters laid before them by the Chancellor in the opening speech.[1] As to the carrying on of the proceedings, the method of bringing forward motions, the introduction of amendments, as to the debates which no doubt took place, there is little or nothing handed down. Only here and there we gather from the Rolls of Parliament that long and set deliberations of the Commons took place.[2] On the other hand, we have more

[1] See *Stubbs*, "Constitutional History," vol. iii., p. 473. The *Modus tenendi parliamentum* gives definite information. We read (*Hardy's* edition, p. 23): "Negotia, pro quibus parliamentum summonitum est debent deliberari secundum kalendarium parliamenti et secundum ordinem petitionum liberatarum et affilatarum, nullo habito respectu ad quorumcumque personas sed, qui prius proposuit prius agat. In kalendario parliamenti rememorari debent omnia negotia parliamenti sub isto ordine: primo de guerra, si guerra sit, et de aliis negotiis personas regis, reginæ et suorum liberorum tangentibus; secundo de negotiis communibus regni, ut de legibus statuendis contra defectus legum originalium, judicialium et executoriarum post judicia reddita quae sunt maxime communia negotia; tercio debent rememorari negotia singularia, et hoc secundum ordinem filatarum petitionum, ut prædictum est."

[2] See the repeated addresses of Speaker Savage to Henry IV. (*Stubbs*, "Constitutional History," vol. iii., p. 30.)

precise information as to the way in which the two Houses co-operated in drawing up an act of parliament. There were different methods in use. The answers to the different points of the king's speech might be given directly to the king by the mouth of the Speaker, or the Lords and Commons might arrange for a conference, the members of which settled the wording of the answer and made their report to the Crown. Under Henry IV the Commons were expressly requested to put the result of their deliberations into writing.[1] All that it is possible to say of the debates is that in both Houses they were conducted with perfect freedom. Elsynge points out that, as early as the time of Edward III, many matters were discussed and debated by the Commons which affected the prerogative of the king, and that they even united in petitions which were directly levelled against it. And yet they were never disturbed or restrained in their consultations, as appears from the answers to the petitions just referred to.[2] A direct intervention of the Crown in the debates of the Commons is equally unknown at this time. A characteristic touch appears at the beginning of the reign of Henry IV when the Speaker besought the King not to listen to tales which members of the House, out of complaisance, might bring to him about uncompleted proceedings, as such a course might exasperate the King against individuals.[3] In proof that the principle of complete *freedom of speech* was established as a privilege of the House of Commons long before it is authenticated by actual documents, we may refer to the one instance, namely, Haxey's case, in which a flagrant breach of this privilege by the Crown is recorded. Haxey was the author of a petition against the extravagance of the court, and upon the complaint of the King was condemned to death as a traitor for this offence but was reprieved. The whole transaction, which is easily explicable on the score of the revolutionary tendencies of Richard II's reign, was expressly declared in Henry IV's first parliament to have been

[1] *Rot. Parl.*, vol. III., p 456.

[2] *Elsynge*, p 177.

[3] *Stubbs*, "Constitutional History," vol III., p. 30.

a breach of law and privilege.[1] There can be no doubt that the foundation upon which the House of Commons has been built was laid already in the Estates Parliament—complete freedom of speech for members.[2]

No less firmly established was the second fundamental privilege of Parliament and its members, immunity from arrest during the session and for forty days after its conclusion. The only case of an infringement of this right—the imprisonment of Speaker Thorpe in the time of Henry IV—may, like the attack upon freedom of speech in Haxey's case, be looked upon as an exceptional outcome of the revolutionary feuds of that period.[3]

Turning to the technical method of procedure we cannot doubt that the institution of three readings followed close upon the introduction of the Bill. For in the first journals of the Lords and Commons (at the beginning and middle of the sixteenth century respectively) this arrangement appears as an old-established practice. And it is impossible but that the final contents of petitions from the Commons must in early days have been determined in this or some similar way before they went to the Lords or the Crown. The fixed formula "*Soit baillé aux seigneurs*" was used for despatching petitions or bills to the Lords.

As to the concurrence of the three factors in legislation adequate information is furnished by the formulæ of enactment

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[1] *Elsynge*, pp. 178–180, also *Rot. Parl.*, vol. iii., pp. 339, 341, 430, 434. Haxey seems not to have been a member but only to have taken part in Parliament as a clerical proctor. See *Stubbs*, "Constitutional History," vol. iii., pp. 507 *sqq.*

[2] *Stubbs* ("Constitutional History," vol. iii., p. 508) has the following striking passage on this subject: "But the very nature of an English parliament repelled any arbitrary limitation of discussion. . . . The debates were certainly respectful to the kings; of their freedom we can judge by results rather than by details. The Commons could speak strongly enough about misgovernment and want of faith; and the strongest kings had to bear with the strongest reproofs. Interference with this freedom of debate could only be attempted by a dispersion of parliament itself, or by compulsion exercised on individual members. Of a violent dissolution we have no example; the country was secured against it by the mode of granting supplies. . . . Of interference of one house with the debates of the other we have no mediæval instances."

[3] As to privilege of freedom from arrest, see *May*, "Parliamentary Practice," pp. 103 *sqq.*

in statutes and by the Rolls of Parliament. The development of the enacting formulæ from the beginning of the sixteenth century shows in the clearest light the growing constitutional importance of the Commons. Down to Richard II's time the laws as a rule contained a statement in the preamble that they had been enacted "*ad petitiones*" of the Commons. Thenceforward the newly won equality of the two Houses was shown by the addition of the words, "with the assent of the prelates, lords and barons." Under Henry IV the customary formula was "by the advice and assent of the lords spiritual and temporal and at the request of the Commons." But under Henry VI it became customary to declare the assent of the Commons. In his reign the words "and by authority of the parliament" were added to the formula. The first enactment of Henry VII gives the wording which, with unessential changes, is that of the present day.[1] We need only briefly mention in conclusion that the formulæ for the grant and refusal of the royal assent and for communications between the two Houses have come down unchanged from this period, as their very wording, couched in old law French, indicates.

When we review the whole of the first great period of development it is easy to recognise that the passage from the fourteenth to the fifteenth century marks a division between two stages. The former century saw great political successes on the part of the Commons and the laying of the foundations of the constitution of Parliament. The fifteenth century, to quote Guizot's striking observation, is not remarkable for any great acquisitions by Parliament in the realm of constitutional law; on the other hand, there followed in the Commons, now that they had made good their claims in law and in authority, as against the Crown and the Lords, a period of construction of internal parliamentary law. This

[1] The formula runs: "The Kynge . . . at his Parliament holden at Westmynster . . . to thonour of God and Holy Chirche and for the comen profite of the roialme by thassent of the lordes spirituell and temporell and the comens in the said Parliament assembled and by auctorite of the sayd Parliamente hath do to be made certein statutes and ordenaunces . . . Be it . . . enacted by the advyce of the lordes spirituelx and temporell and the comens in this present Parlement assembled and by auctorite of the same." ("Statutes of the Realm," vol. ii., p. 500.)

is the time during which parliamentary proceedings must have acquired their permanent shape and their leading principles, in which parliamentary usage evolved the elements of its order of business and a stable tradition of procedure.

We have yet to bring out one more point. Parliament originated as the highest court of law in the realm, the High Court of Parliament, as for hundreds of years down to the present day its solemn title has run. We may here see a reference to the very earliest period of English parliamentary history, when the Commons constituted a subordinate part of the great assembly for advice and judgment, the *parliamentum*, which the king often held several times a year with his great vassals and his chief judges and officials. The judicial character of parliamentary action passed more and more into the background as the House of Commons became consolidated and rose in political and constitutional power. While the organisation of the Common Law courts was being completed, while the new court of Chancery was coming into existence, while the Privy Council was acquiring the beginnings of its jurisdiction, Parliament was becoming the sovereign legislative and advisory assembly of the kingdom. Not till after this stage was completed were the fundamental lines of its inner constitution and procedure laid down: their forms bear no marks of the ideas of feudal law, or of the notion of the *parliamentum* as the great court of judicature of the chief vassals. This accounts in great measure for the extraordinary vitality and power of development of the internal regulation of Parliament. But the judicial element which shared in the process of formation of Parliament has been by no means entirely lost. The rise and development of impeachment, the mode in which accusations against ministers were framed, show its influence in full significance. It is true that it is only in a few directions that the internal law of Parliament, its procedure and order of business, have been affected. It would be a mistake to allow ourselves to be misled by certain expressions in the parliamentary literature of the sixteenth and seventeenth centuries into regarding the historic procedure of the House of Commons as analogous to the conduct of a law suit; the frequent and long maintained claims of the House of Commons to

recognition by the law as a Court of Record, an actual Court of Justice, have proved fruitless; the forms of parliamentary procedure have been developed from its own resources, and have no connection with those of an English action at law. The conception of the House of Commons as a court of law is rather to be looked upon as a claim which arose under the pressure of political needs; as such it had an extraordinarily strong and productive influence on the development of one branch of the *lex et consuetudo parliamenti*—namely, *Privilege*. Consequently, as will be more exactly explained below, this notion had a certain influence upon internal parliamentary law.[1] But in their essential features the procedure and order of business have from the first grown out of the political exigencies of a supreme representative assembly with legislative and administrative functions.

[1] The classical upholder of this doctrine is Coke, who makes it the starting point for his description, in the first chapter of his Fourth Institute, of the "High and Most Honourable Court of Parliament." He is able to adduce in support many expressions of the ancient parliamentary terminology. Thus, for example, the passing of a Bill used to be described as a "judgment" of the House, the forms of writ and warrant were adopted for the external relations of the House; and finally, as we must not forget, the House of Commons had from ancient times formed a part of the *Magnum concilium*. But anyone who closely follows the party strife of the sixteenth and seventeenth centuries under the leadership of the learned jurists of those times will have little difficulty in seeing that their constitutional arguments, at times bordering on the fantastic, were mere cloaks for the political claims to power made by the majority of the House of Commons, and by the sections of the nation which it represented. See, upon this, Hatsell's comments on Sir Edward Coke ("Precedents," vol. i., p. 108).

CHAPTER III

THE DEVELOPMENT OF THE HISTORIC PROCEDURE OF PARLIAMENT

THE beginning of the journals of the House of Commons about the middle of the sixteenth century throws a flood of light upon its procedure and the regulation of its business.[1] D'Ewes's carefully compiled reports of the debates in Queen Elizabeth's parliaments begin almost at the same date, and thenceforward we have a long series of direct authorities, not only on the subject matter, but also on the form of parliamentary action. Further, we have in the reports to the Irish parliament by Hooker, who was a member of the House of Commons, the earliest impartial and careful description of the actual procedure in the House. His reports were written about 1560. From the same time, too, comes the first scientific account of the English state system as a whole, the celebrated work of Sir Thomas Smith, "De Republica Anglorum," in which a special chapter is devoted to a delineation, both concise and clear, of the principles of English parliamentary law and procedure.

One of the most striking features in the picture of parliamentary life which these authorities present is the highly developed form of its procedure. We have already indicated that this is a convincing proof of long-continued use and shows the great age of the forms employed. The remark applies above all to the solemnities of parliamentary ceremonial: the mode of summoning and opening Parliament, the parts taken on these occasions by King, Lords, and Commons, the functions of the Chancellor and of the Speaker, the summons of the Commons by the messenger of the Lords, and their appearance at the bar of the Upper House, were all settled by established practice in the sixteenth century and have remained in all essential particulars

[1] The journals of the Lords begin in the year 1509–10, those of the Commons in the year 1547.

unaltered down to the beginning of the twentieth century. Sir Thomas Smith and Hooker give vivid descriptions of all these formalities, which are even partly described in the fourteenth and fifteenth century documents. On comparing them with the ceremonial of the parliaments of the present King, Edward VII, it is impossible to repress a sense of wonder at the permanence and power of tradition in the English parliament.[1] Not only the form but the spirit also of the English constitution has remained essentially unchanged during the course of the last four hundred years. This impressive result appears from a comparison of the doctrines of Sir Thomas Smith with those of English constitutional law at the present day. Sir Thomas Smith opens his chapter on Parliament with the following sentences[2]:—

"The most high and absolute power of the realm of England consisteth in the parliament: for as in war where the king himself in person, the nobility, the rest of the gentility and the yeomanry are, is the force and power of England; so in peace and consultation, where the prince is, to give life and the last and highest commandment, the barony or nobility for the higher, the knights, esquires, gentlemen, and commons for the lower part of the commonwealth, the bishops for the clergy, be present to advertise, consult and show what is good and necessary for the commonwealth, and to consult together; and upon mature deliberation, every bill or law being thrice read and disputed upon in either house, the other two parts, first each apart, and after the prince himself in the presence of both the parties, doth consent unto and alloweth. That is the prince's and the whole realm's deed, whereupon no man justly can complain, but must accommodate himself to find it good and obey it.

"That which is done by this consent is called firm, stable and *sanctum*, and is taken for law. The parliament abrogateth old laws, maketh new, giveth order for things

[1] As to modern practice, and the trifling changes in the old law, see, for example, *Macdonagh*, "Book of Parliament," pp. 96–114.

[2] "De Republica Anglorum" (Ed. Elzevir, 1641), lib. ii., cap. 2, pp. 166 *sqq.* (quoted, *Stubbs*, "Constitutional History," vol. iii., p. 484). The first edition in English appeared in 1581. The modern spelling of Stubbs is here used.

past and for things hereafter to be followed, changeth right and possessions of private men, legitimateth bastards, establisheth forms of religion, altereth weights and measures, giveth form of succession to the crown, defineth of doubtful rights, whereof is no law already made, appointeth subsidies, tailes, taxes and impositions, giveth most free pardons and absolutions, restoreth in blood and name, as the highest court condemneth or absolveth them whom the prince will put to trial. And to be short, all that ever the people of Rome might do either *centuriatis comitiis* or *tributis*, the same may be done by the parliament of England, which representeth and hath the power of the whole realm, both the head and body. For every Englishman is intended to be there present either in person or by procuration and attorney, of what pre-eminence, state, dignity or quality soever he be, from the prince (be he king or queen), to the lowest person of England. And the consent of the parliament is taken to be every man's consent."

We need only consult the corresponding section in Blackstone's Commentaries, and a statement by one or other of the modern teachers of constitutional law to convince ourselves of the organic permanence of the constitutional principles thus laid down in the sixteenth century. In doing so it is worth while remembering that Sir Thomas Smith must have felt the influence of the theories of his day, which had been developed under the imperious Tudor monarchs, and almost taught a doctrine of absolutism: yet he could write a passage like the foregoing, setting forth without qualification or obscurity the sovereignty of Parliament as the foundation of the state. However great the difference between the actual application of the principle in the sixteenth century and that in the present day, its continuity in theory and practice is incontestable. It is no less than the expression of the national method of regarding state and law, which the English people has upheld unimpaired and fundamentally unchanged.[1]

[1] To take an example from modern constitutional lawyers, we may quote Professor Dicey, the leading authority at the present day on English public law. In his "Law of the Constitution" he begins his chapter on the nature of parliamentary sovereignty with the words, "The sovereignty

As to parliamentary procedure proper, it will be best here again to let Sir Thomas Smith speak for himself.[1] After having first dealt with the Upper House, he goes on to give the following account[2]:—

"In like manner in the lower house, the speaker, sitting in a seat or chair for that purpose, somewhat higher that he may see and be seen of them all, hath before him, in a lower seat, his clerk who readeth such bills as be first propounded in the lower house, or be sent down from the lords. For in that point each house hath equal authority to propound what they think meet either for the abrogating of some law made before, or for making of a new. All bills be thrice, in three divers days, read and disputed upon,

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of Parliament is (from a legal point of view) the dominant characteristic of our political institutions. . . . The principle of parliamentary sovereignty means neither more nor less than this, namely, that Parliament [*i e*, the King, the House of Lords and the House of Commons acting together], has, under the English constitution, the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament." Now take some sentences from Blackstone's Commentaries. After referring to the well-known saying of Sir Edward Coke's, that the power and jurisdiction of Parliament are so transcendent and absolute that it cannot be confined within any bounds, he proceeds: "Parliament hath sovereign and uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving and expounding of laws, concerning matters of all possible denominations, ecclesiastical or temporal, civil, military, maritime or criminal: this being the place where that absolute despotic power, which must in all governments reside somewhere, is intrusted by the constitution of these kingdoms. All mischiefs and grievances, operations and remedies, that transcend the ordinary course of the laws, are within the reach of this extraordinary tribunal. It can regulate, or new-model the succession to the crown; as was done in the reign of Henry VIII and William III. It can alter the established religion of the land; as was done in a variety of instances, in the reigns of King Henry VIII and his three children. It can change and create afresh, even the constitution of the kingdom and of parliaments themselves; as was done by the act of union, and the several statutes for triennial and septennial elections. It can, in short, do everything that is not naturally impossible; and therefore some have not scrupled to call its power, by a figure rather too bold, the omnipotence of parliament."—("Commentaries," vol. i., book i., c. 2, p. 161.)

[1] The no less valuable and detailed reports of Hooker have been made use of in the historical notes in Book II., *infra*.

[2] *Sir Thomas Smith*, lib. ii., cap. iii., pp. 169–181; *Stubbs*, "Constitutional History," vol. iii., pp. 490 *sqq*.

before they come to the question. In the disputing is a marvellous good order used in the lower house. He that standeth up bareheaded is to be understood that he will speak to the bill. If more stand up who that is first judged to arise is first heard[1]; though the one do praise the law, the other dissuade it, yet there is no altercation. For every man speaketh as to the speaker, not as one to another, for that is against the order of the house. It is also taken against the order to name him whom you do confute, but by circumlocution, as he that speaketh with the bill, or he that spake against the bill or gave this and this reason.[2] And so with perpetual oration, not with altercation he goeth through till he have made an end. He that once hath spoken in a bill, though he be confuted straight, that day may not reply, no though he would change his opinion. So that to one bill in one day one may not in that house speak twice, for else one or two with altercation would spend all the time. The next day he may, but then also but once.

"No reviling or nipping words must be used, for then all the house will cry 'it is against the order'; and if any speak unreverently or seditiously against the prince or the privy council, I have seen them not only interrupted, but it hath been moved after to the house, and they have sent them to the Tower. So that in such multitude, and in such diversity of minds and opinions, there is the greatest modesty and temperance of speech that can be used. Nevertheless, with much doulce and gentle terms they make their reasons as violent and as vehement one against the other as they may ordinarily, except it be for urgent causes and hasting of time. At the afternoon they keep no parliament. The speaker hath no voice in the house, nor they will not

[1] *Hooker* says more distinctly, "If, when a bill is read, divers do rise at one instant to speak to the same, and it cannot be discerned who rose first, then shall he (the Speaker) appoint who shall speak." (*Mountmorres*, vol i., p. 118.)

[2] The custom has remained down to the present day, and is strictly adhered to; members never mention each other by name in debate, but speak of each other as the "honourable members" for such and such a constituency, or use certain descriptions determined by the office or profession of the person referred to.

suffer him to speak in any bill to move or dissuade it.[1] But when any bill is read, the speaker's office is, as briefly and plainly as he may, to declare the effect thereof to the house. If the commons do assent to such bills as be sent to them first agreed upon by the lords they send them back to the lords, thus subscribed 'les commons ont assentus'; so if the lords do agree to such bills as be first agreed upon by the commons, they send them down to the speaker thus subscribed 'les seigneurs ont assentus.' If they cannot agree, the two houses (for every bill from whencesoever it doth come is thrice read in each of the houses), if it be understood that there is any sticking, sometimes the lords to the commons, sometimes the commons to the lords, do require that a certain of each house may meet together, and so each part to be informed of other's meaning; and this is always granted. After which meeting for the most part, not always, either part agrees to other's bills.

"In the upper house they give their assent and dissent each man severally and by himself, first for himself and then for so many as he hath proxy. When the chancellor hath demanded of them whether they will go to the question after the bill hath been thrice read, they saying only *Content* or *Not Content*, without further reasoning or replying, and as the more number doth agree so it is agreed on or dashed.

"In the nether house none of them that is elected, either knight or burgess, can give his voice to another, nor his consent or dissent by proxy. The more part of them that be present only maketh the consent or dissent.

"After the bill hath been twice read and then engrossed and eftsoones read and disputed on enough as is thought, the speaker asketh if they will go to the question. And if they agree he holdeth the bill up in his hand and saith, 'As many as will have this bill go forward, which is concerning such a matter, say "Yea."' Then they which allow the bill cry 'Yea,' and as many as will not say 'No'; as the cry of 'Yea' or 'No' is bigger so the bill is

[1] *Hooker* says: "If upon this trial the number of either side be alike, then the Speaker shall give his voice, and that only in this point; for otherwise he hath no voice." (*Mountmorres*, vol. i., pp. 119, 120.)

allowed or dashed. If it be a doubt which cry is bigger they divide the house, the speaker saying, 'As many as do allow the bill, go down with the bill; and as many as do not, sit still.' So they divide themselves, and being so divided they are numbered who made the more part, and so the bill doth speed. It chanceth sometime that some part of the bill is allowed, some other part has much controversy and doubt made of it; and it is thought if it were amended it would go forward. Then they choose certain committees of them who have spoken with the bill and against it to amend it and bring it again so amended, as they amongst them shall think meet: and this is before it is ingrossed; yea and sometime after. But the agreement of these committees is no prejudice to the house. For at the last question they will either accept it or dash it, as it shall seem good, notwithstanding that whatsoever the committees have done.[1]

"Thus no bill is an act of parliament, ordinance, or edict of law until both the houses severally have agreed unto it after the order aforesaid; no nor then neither. But the last day of that parliament or session the prince cometh in person in his parliament robes and sitteth in his state; all the upper house sitteth about the prince in their states and order in their robes. The speaker with all the common house cometh to the bar, and there after thanksgiving first in the lords' name by the chancellor, &c., and in the commons' name by the speaker to the prince for that he hath so great care of the good government of his people, and for calling them together to advise of such things as should be for the reformation, establishing, and ornament of the commonwealth; the chancellor in the prince's name giveth thanks to the lords and commons for their pains and travails taken, which he saith the prince will remember and recompence when time and occasion shall serve; and that he for his part is ready to declare his pleasure concerning their proceedings, whereby the same may have perfect life and accomplishment by his princely authority, and so have the whole consent of the realm. Then one reads the titles

[1] See, in Book II, the chapter on the history of committees.

of every act which hath passed at that session, but only in this fashion: 'An act concerning such a thing,' &c. It is marked there what the prince doth allow, and to such he saith, '*Le roy*,' or '*La royne le veult*'; and those be taken now as perfect laws and ordinances of the realm of England, and none other; and, as shortly as may be, put in print, except it be some private case or law made for the benefit or prejudice of some private man, which the Romans were wont to call *privilegia*. These be only exemplified under the seal of the parliament and for the most part not printed. To those which the prince liketh not he answereth, '*Le roy*, or '*La royne s'advisera*,' and these be accounted utterly dashed and of none effect.

"This is the order and form of the highest and most authentical court of England."

A perusal of the copious reports of the proceedings of Queen Elizabeth's parliaments collected by D'Ewes confirms the accounts given by Smith and Hooker not only as to the broad outlines but in detail. It shows, too, that in spite of the submissiveness of Parliament to the power of the Crown, which characterised the Tudor period, there was vigorous parliamentary life in the House of Commons. Under Henry VIII its influence as opposed to the Crown and its ministers reached its lowest point; but there was an unmistakeable rise in the political self-confidence of the nation by the time of Queen Elizabeth, which found distinct expression in the proceedings of the House of Commons during the latter half of her reign. Its source was the ever-deepening religious ferment that had seized upon all classes of the nation. Before her death there had appeared on the floor of Parliament the advance guards of a movement of the highest importance in its effect on the English constitution, one upon which the modern form of parliamentary government depends: we refer to the *rise of parties—i.e.*, bodies of men with clearly defined common political or religious convictions and aims. The religious division in the nation was only apparently bridged over by Elizabeth's first great achievement in legislation, the Act of Uniformity; and the formation of sects consequent on this division, by uniting in groups the adherents of the various religious

persuasions, created the first political and parliamentary parties in England. The grouping of members effected a profound change in the character of Parliament, and more particularly in that of the House of Commons. "Till then, especially during the great struggle between York and Lancaster in the fifteenth century, the House of Commons had been a homogeneous body, both socially and politically; its members had, in all important matters affecting the Crown, the Church, or the House of Lords, appeared to be guided by the same motives. The gentry, in the wide sense of the word which it had already acquired in the fifteenth century, formed the predominant element amongst the Commons. In the great constitutional struggles under Richard II and the house of Lancaster they represented the class interests common to them and the Estate of the social leaders, the great vassals—the Lords; there was then no scope for political opposition or for the formation of real parties within the House. Such parties as there were arose from the purely factious cleavage among the ruling classes between the supporters of the different dynastic claimants, and expressed nothing more.[1]

The homogeneity of the Lower House, strengthened by restrictive regulations as to the county franchise and by the policy of the Tudors in their opposition to town privileges, remained a characteristic of the parliaments of the sixteenth century.[2] Individual members might, with more or less difficulty, be won over to support the wishes of the Crown and its servants; but, on the whole, the House, in its acceptance or rejection of the proposals of the Government, still acted as a unit. When the prevailing inclination of

[1] "It is too much to say," says Stubbs, "that the knights as a body stood in opposition or hostility to the Crown, Church, and Lords; it is true to say that, when there was such opposition in the country or in the Parliament, it found its support and expression chiefly in this body." ("Constitutional History," vol. iii., p. 568)

[2] The Statute of 1406 (7 Henry IV, cap. 15) had, no doubt by way of confirmation of the customary law, directed that at the elections of knights of the shire all present in the county court (*i.e.*, all freemen) should vote. The Statute of 1429 (8 Henry VI, cap. 7), on the other hand, limited the right of voting to those "possessing free land or tenement to the value of 40 shillings by the year at the least." See *Taylor*, "The Origin and Growth of the English Constitution," vol. i., p. 574.

the House was unfavourable to the proposals of the ministers or, what comes to the same thing politically, to the bills sent down from the Lords, recourse was frequently had to the expedient of a conference; and any compromise arrived at in the deliberations of the conference was, as a rule, cheerfully accepted by the House.[1] The great modern historian of the time of Henry VIII gives a striking description of the parliament of that period: "In the House of Commons then, as much as now, there was in theory unrestricted liberty of discussion and free right for any member to originate whatever motion he pleased. 'The discussions in the English parliament' wrote Henry himself to the Pope, 'are free and unrestricted; the Crown has no power to limit their debates or to controul the votes of the members. They determine everything for themselves, as the interests of the commonwealth require.'[2] But so long as confidence existed between the Crown and the people, these rights were in great measure surrendered. The ministers prepared the business which was to be transacted; and the temper of the Houses was usually so well understood, that, except when there was a demand for money, it was rare that a measure was proposed the acceptance of which was doubtful, or the nature of which would provoke debate."[3]

Queen Elizabeth was from the outset far from well disposed to parliamentary government. She was reluctant to summon the House; and once more the people's right of representation found its best defence in the financial necessities of the Crown.[4] In all matters the Queen was filled with a strong consciousness of power, and she was always determined to make full use of her sovereignty. She was therefore continually seeking to repel the encroachments of Parliament upon her schemes of policy, and in certain important questions she even attempted to exclude it completely. Nevertheless, the personal qualities of Elizabeth had the effect of maintaining for a little longer the

[1] There are not wanting examples of the refusal of proposals in spite of their acceptance by a conference. See a case in *D'Ewes*, p. 257.

[2] *State Papers*, vol. vii., p. 361.

[3] *Froude*, "History of England," vol. i., pp. 206, 207.

homogeneous character of the House. For the characteristic importance and greatness of her personal government lay in the fact that, more than any other English monarch has ever done, she embodied the national ideals and aims of her time, and allowed these to guide her at all crises of her policy.[1] And therefore the House of Commons of her time, also, as a faithful exponent of the devotion to the Queen felt by the nation at large, was in the main a body with feelings that affected all its members alike.

Nevertheless in the later parliaments of Elizabeth we can see signs of the beginning of differentiation. Especially does this show itself upon the great questions of religious belief and ecclesiastical organisation, which so deeply affected the age, all the more because Elizabeth looked upon the discussion of such questions as an infringement of her prerogatives.[2] Excited, even stormy, sittings of the Commons took place. Certain members, who were obviously assured of the support of some of their colleagues, ventured to express opposition to the Crown and Government; divisions were taken in which the minorities turned out to be large; and though respect to the Lords was always emphasised, bills sent down by them were at times amended or entirely thrown out. As yet, however, there were no settled parties, there was no well-marked organisation into groups for purposes of parliamentary opposition to the policy of the Crown and its advisers, or to the aims of other groups in the House. The Queen had complete control over her right of assent or dissent; she often interposed in the trans-

[1] "In her position towards her ministers she represented in her own person the vacillations and fluctuations of popular opinion," says Bishop Creighton in his excellent study of Queen Elizabeth (p 305).

[2] The message which Queen Elizabeth sent to the Speaker at the beginning of the Session of 1593 is instructive as to this "Wherefore Mr Speaker, Her Majesty's pleasure is that if you perceive any idle heads, which will not stick to hazard their own estates, which will meddle with reforming the Church and transforming the Commonwealth and do exhibit any bills to such purpose, that you do not receive them until they be viewed and considered by those who it is fitter should consider such things" (*Creighton*, "Queen Elizabeth," p. 266). And in 1566, when Parliament opposed her ecclesiastical policy, she said to the Lords, "She was not surprised at the Commons, for they had small experience and acted like boys" (*Froude*, "History of England," vol. vii., p. 458).

actions of the Commons by means of direct intimations to the Speaker, or by communicating to the House through some exceptionally devoted member, her displeasure or dissatisfaction with the course of its proceedings.[1]

Elizabeth's attacks were chiefly directed against the freedom of speech of the members. As late as 1593 the Chancellor answered the Speaker, Sir Edward Coke, when he made the customary request for the privileges of the House by saying, "Privilege of speech is granted, but you must know what privilege you have; not to speak every one what he listeth or what cometh in his brain, but your privilege is Aye or No." And at the opening of the parliament of 1601 the Speaker reported an intimation from the Queen through the Lord Keeper "that this parliament should be short. And therefore she willed that the members of this House should not spend the time in frivolous, vain, and unnecessary motions and arguments, but only should bend all their best endeavours and travails wholly in the devising and making of the most necessary and wholesome laws for the good and benefit of the commonwealth and

[1] In 1566 the Queen came into conflict with the House of Commons over one of the members whom she had sent to the Tower for making a speech which had displeased her: but Elizabeth soon gave way. The sharp complaints of the existing form of parliamentary government in 1575 made by Peter Wentworth are very characteristic (*D'Ewes*, pp. 236 *sqq.*): "There is nothing so necessary for the preservation of the prince and state as free speech, and without it is a scorn and mockery to call it a parliament house." Later on in this speech he says: "Two things do great hurt in this place: the one is a rumour that the Queen's Majesty liketh not such a matter, whosoever prefereth it she will be offended with him; or the contrary. The other is a message sometimes brought into the House, either of commanding or inhibiting, very injurious to the freedom of speech and consultation." The proceedings of the 5th of November 1601 (*D'Ewes*, p. 627) should also be read: a sharp protest was made against an irregular expression of Cecil's, that the Speaker was to "attend" the Lord Keeper—the Minister had to apologise. A similar conflict with the Lords, ending in the same way, is given by *D'Ewes*, p. 679. As an instance of divisions, one which occurred at the sitting of the 12th of December 1601 may be quoted (*D'Ewes*, p. 683), where, on a church matter, the votes were 106 against 105. On the 24th of November 1601, during the deliberations upon the important question of trade monopolies (*D'Ewes*, p. 651), Cecil complained of the growing disorder and violence of the discussions. As to the royal sanction, see *D'Ewes*, p. 239.

the realm."[1] Certain subjects, such as the question of the succession, the constitution of the Church, &c., all things that were then understood to be included in the word Prerogative—"this chiefest flower in her garden, the principal and head pearl in her crown and diadem," as Elizabeth herself once said—were to be excluded from free treatment in Parliament.

It cannot, however, fail to be recognised that from parliament to parliament the tone of members became freer and their fondness for speaking greater. The management of the House by the Speaker and the confidential agents of the Crown became more and more difficult; their interference was vehemently opposed by appeals to the privileges of Parliament and its members. As we read, in the reports of D'Ewes, the speeches made on such occasions with their earnest admonitions as to the limits placed by law upon the sovereign and as to the necessity for freedom of speech and action in Parliament, and notice how the speakers always hark back to the precedents of the fourteenth and fifteenth centuries, created in the times of the first constitutional rule of the Lancastrian kings, it is clearly borne in upon us that the ecclesiastical reformation in England was also beginning to evoke a new parliamentary spirit.[2]

[1] *D'Ewes*, p. 621. The proceedings in the parliament of 1566 are very instructive. The Commons insisted, against the wish of the Queen, upon discussing Elizabeth's marriage, and the question of the succession. Elizabeth sent her command to the House to let this matter drop on pain of her displeasure. The Commons would not allow themselves to be diverted: Wentworth and other members characterised the royal message as a breach of privilege, and the debate was adjourned after lasting five hours—a thing which had never happened before. When the Queen again tried to enforce silence by a command to the Speaker, the Commons appointed a committee to draw up an address to her. It is instructive to find, not only that the address displayed both in tone and substance a complete insistence on their rights, but that the chief minister, Cecil, appended to it special notes as to the freedom of the Commons. After further complications, which led as far as the arrest of a member, Queen Elizabeth gave way to the firmness of the House. See as to these events, *Froude*, "History of England," vol. vii., pp. 460 *sqq.* The same sort of thing happened with reference to the great debates on Church matters in the parliament of 1571 (*Froude*, vol. ix., pp. 428 *sqq.*).

[2] See, for instance, the speech of Peter Wentworth, 1575 (*D'Ewes*, pp. 236 *sqq.*): he quotes *Bracton* (lib. i., cap. 8, *Twiss's edn.*, vol. i., p. 39), "The king ought not to be under man, but under God and under the law, because

The attitude of the Crown towards the religious tendencies of the masses of the people, at first disapproving and then directly hostile, had the effect of once more uniting the Commons against the throne in the new era of parliamentary power and political self-confidence. As soon as this struggle came to an end with the victory of the Commons, *i.e.*, on the assembling of the Long Parliament, the full meaning of the new parliamentary idea which had been born of the religious struggle became apparent. The House of Commons, like the nation, fell into two sharply divided groups representing conceptions of Church and State which were fundamentally antagonistic. The first struggle between these conceptions fills up the great period of the Civil War and the Protectorate; but the consequences of this division of minds have had an incalculably wider range and have never ceased to operate. The truth is, as Gardiner has put it, that the division of the 8th of February 1641 upon the question of the abolition of episcopacy marked the birth of the two great English parties. The whole future constitutional development of England springs out of the rise, continuance and growth of the two great camps which in all their changes have sheltered the upholders of the two chief schools of political thought within the nation. Of the multitude of political ideas and aims which cannot find expression until the apparatus of party becomes available many are so essential to the working of national self-government that it is not too much to say that without parties no effective scheme of self-government could be devised. The rise of parties, political and yet national, marks the coming of age of the people.[1]

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* the law maketh him a king: let the king therefore attribute that to the law which the law attributeth to him, that is, dominion and power; for he is not a king in whom will and not the law doth rule."

[1] It would seem that an important share in the formation of parliamentary parties must be attributed to the power of initiative exercised by the Crown in the House of Commons: during the Tudor period the claim to this was continually growing in strength, and was asserted through the Secretary of State and other salaried officers of the Crown. In this way a small, but all the more compact, party group was formed—the party of the "Courtiers." The speeches of opponents of this tendency as early as the time of Elizabeth show that its meaning had been grasped: this can be seen in the utterances of Wentworth referred to above.

In our remarks on the general character of Parliament in the period under discussion we have indicated the main factors which affected the development of parliamentary procedure. We see from the journals and other authorities the adoption of a fixed arrangement for the whole growing activity of the House. In the Upper House, on the day appointed by royal proclamation, the Lords assemble and take their places in the prescribed order which has lasted to our own day. The Queen is seated on the throne: her chief minister, at that time often a commoner (as, for instance, Sir Nicholas Bacon, the father of the famous Francis Bacon), takes his place upon the woolsack, the seat reserved for the judges. One step lower sit at their table the two secretaries, the Clerk of the Crown and the Clerk of the Parliaments. The Queen's speech, in those days a long and fairly elaborate production, is then, after the Queen's permission has been asked, read aloud: it states political considerations, points out the tasks which Parliament is to undertake, and concludes with a request to the Commons to choose their Speaker.

The choice of the Speaker is made, it is true, on the recommendation of a member of the House belonging to the Government, and is therefore, in point of fact, made under Government influence; but the Chancellor at the opening of Parliament emphasises the complete freedom of the House in its choice of a president. The confirmation of the Speaker's election follows in the same manner as at the present day. After the Speaker elect has humbly begged to be excused and asseverated his unfitness for the office the confirmation follows, accompanied by a second speech from the Chancellor, which, according to the fashion of the period, is a masterpiece of prolix and flowery oratory full of compliments to the Speaker. The Speaker's oration which comes next is no less detailed, but it ends with what was then a very important matter, namely, with a request to the

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Elsynge says clearly: "Cardinal Wolsey's ambition first brought in the privy counsellors and others of the King's servants into the House of Commons, from which they were antiently exempted. The effects are, the Commons have lost their chief jewel (freedom of speech)." ("The Manner of Holding Parliaments," p. 171.)

Crown for a confirmation of the privileges of the House. This is acceded to in a fresh speech by the Chancellor, which, in spite of its well-turned sentences and courteous phrases, plainly shows the unbending attitude of the Crown towards the Commons.[1]

Now the House sets to work. The practice, which has come down to modern days, is already settled that immediately after hearing the Queen's speech, and listening to its repetition by the Speaker, the House takes the first reading of a bill as an assertion of its right to do what business it pleases. The next step taken is, as at present, the appointment of a committee to discuss what supplies are to be granted. And it is already a fixed custom that the Queen's speech is to be answered by an address which takes the first place in the deliberations of the House. There is no prescribed order of succession for the bills which have then to be dealt with; practically the Speaker arranges when they are to be taken. In so doing he exercises a function of much political importance, for the Government thus obtain great influence on the course of business. Further, in some cases express instructions are given by the Queen on the subject. On one occasion she admonishes the Commons in the following terms: "To come to an end, only this I have to put you in mind of, that in the sorting of your things, you observe such order, that matters of the greatest moment, and most materiâl to the state, be chiefly and first set forth, so as they be not hindered by particular and private bills to this purpose. That when those great matters be past this assembly may sooner take end, and men be licensed to take their ease."[2] Even in her last parliament (1601) the Queen commands "that this parliament should be a short parliament, and that the members should not spend the time in frivolous, vain, and unnecessary motions and arguments."[3]

Notwithstanding the influence of the Crown, which is exercised, both at this time and subsequently, chiefly through

[1] See, for example, the description of the opening of Elizabeth's first Parliament, 1558, in D'Ewes's Journals.

[2] See *D'Ewes*, p. 17.

[3] *Ibid.*, p. 621.

the Speaker and those members of parliament who belong to the Privy Council, the principle is by now established that any member is entitled to make a proposition as to the order in which business shall be taken and that the decision depends upon the order of the House.[1]

A typical instance of the precision with which the House even at this date regulated its business is the order of the 9th of May 1571—that for the rest of the session special afternoon sittings should be held every Monday, Wednesday, and Friday, from 3 to 5, the time to be employed only in taking first readings of private bills.[2]

All bills were read three times, as also were the "provisoes," *i.e.*, additions placed at the end of a bill, the insertion of which was the current form of carrying amendments into effect. At the first reading the Speaker, with the help of the breviate attached to the bill, would give the House a short summary of the proposed enactment. After the second reading the bill, unless referred to a committee, was ordered to be engrossed (*i.e.*, inscribed on parchment): if referred, this step took place just before the third reading. In addi-

[1] See *D'Ewes*, pp. 676, 677. In the proceedings of 1601 there is a complete procedure debate, arising on an attempt by the Speaker to interpose the discussion of a bill for continuing the validity of certain acts of parliament, when the House wished to deal with another matter. The debate is highly instructive. We read as follows: "Mr. Carey stood up and said: 'In the Roman Senate the Consul always appointed what should be read, what not; so may our Speaker whose place is a Consul's place: if he err or do not his duty fitting to his place, we may remove him. And there have been precedents. But to appoint what business shall be handled, in my opinion we cannot.' At which speech some hissed. Mr. Wiseman said: 'I reverence Mr. Speaker in his place, but I take great difference between the old Roman Consuls and him: Ours is a municipial government, and we know our own grievances better than Mr. Speaker: and therefore fit every man, *alternis vicibus*, should have those acts called for he conceives most necessary.' All said I, I, I. Mr. Hackwell said: 'I wish nothing may be done but with consent, that breeds the best concordance; my desire is that the bill of ordnance should be read. If you, Mr. Speaker, do not think so, I humbly pray it may be put to the question.' At the end of the discussion Mr. Secretary Cecil said: 'I will speak shortly because it best becomes me. . . . I wish the bill for continuance of statutes may be read; and that agrees with the precedent order of this House; . . . yet because the spirit of contradiction may no more trouble us, I beseech you let the bill of ordnance be read, and that's the House desire.'"

[2] *Parry*, p. 221.

tion to bills the House had to occupy itself with motions, which might be proposed at any time.

Repeated attempts were made to secure the attendance of members in the House by orders threatening fines for unauthorised absence.[1] The debates were lively, but were carried on under careful regulation. The House of Commons in the time of Queen Elizabeth, no less than at the present day, was fully conscious that orderly and peaceful conduct of its business was one of its traditional glories, and it acted accordingly.[2] As Elizabeth's reign drew towards its end parliaments became more frequent, and party divisions more sharply marked; consequently debates became more vehement and greater difficulty was found in maintaining peace and order in the House. When, at the beginning of the reign of James I, the opposition between Crown and Parliament became acute and the era of severe parliamentary struggle began, it became all the more necessary to define the mode of procedure, to draw up new rules, and to increase the stringency of the regulations that had grown up by custom. A proof of this is the fact that it is in this period of the history of the House that we find the oldest of the orders and of the formal decisions on points of order, upon which from generation to generation all further parliamentary tradition has been built up.[3]

The parliamentary journals of the time of James I contain numerous decisions aimed at defining the order of discussion. In consequence, this part of parliamentary usage became less and less the subject of oral tradition and more and more a customary law fixed by reference to the

[1] The expedient does not seem to have been very successful; at all events the modern complaint that towards the end of the session the numbers in attendance diminish considerably goes back to Elizabethan times. Thus Cecil boasts, in the sitting of the 9th of February 1601, that the House is not thin, as on other occasions, towards the end of its labours (*D'Ewes*, p. 675).

[2] See *D'Ewes*, p. 675.

[3] A mark of increased interest in parliamentary procedure is, that the first comprehensive accounts of the order of business were drawn up towards the end of this period, in the second half of the seventeenth century. Working backwards, too, the last great author of a work on the historic order of business, Hatsell, carries back his collection of precedents to the first parliament of James I.

journals. At the same time the House began to give final definition to fluctuating usages and to create new procedure by express enactment. It is true that for a long time this autonomous legislation was mainly declaratory in form; but it was characteristic of the legal controversy of the day, as indeed of all the great constitutional struggles in England, to represent what were really innovations (in this case the new rules elaborated by the decisions of the House) as mere restatements of long-established practice. It may well be that the occasion for the declaration was at times a mere pretext for making it, but such a method could not produce new rules of procedure of the modern logical type. There can, however, be no doubt that the new spirit of the House of Commons, born of its resistance to absolutism, did, on questions of procedure as well as in other matters, often put new wine into old bottles.

It is no mere chance that the journals of the House began from the end of the sixteenth century to be compiled with increasing care and detail. It was the outcome of the anxiety of the Commons to maintain their practice in each individual case and, above all, to take care that precedents as to procedure and privilege were safeguarded against forgetfulness and preserved for future use. The incessant parliamentary struggles of the first half of the seventeenth century were conducted almost from beginning to end as quarrels over the privileges of the House of Commons, at times with the Lords, at times with the Crown or its ministers. From the very nature of procedure and privilege the boundary between them is in many parts purely theoretical, and consequently the heightened watchfulness of the Commons, and their constructive conservatism in matters of privilege benefited the whole of parliamentary law, inclusive of procedure, upon which its effects were both fruitful and strengthening.[1]

[1] See *Parry*, p. 256. The advances made by the House of Commons in the definition and extension of its privileges during the reign of Elizabeth are shortly these.—(1) Jurisdiction was claimed in the latter part of the period in respect of contested elections: this was finally conceded under James I (1603). (2) The power of the House to punish its own members, and also to punish any infraction of its rights from

In this period begins the regular service of the Clerk and his staff, carried on under the supervision of the House. The order book—the record which contains the decisions of the House as to the conduct of its business—makes its appearance as a regular part of the apparatus of the House, and there are repeated resolutions on various points as to the manner in which it is to be kept.[1]

The parliamentary proceedings of 1604, 1610, 1614 and 1621 were marked by stubborn conflicts between James I and the House of Commons, now well on its way to entire self-confidence in political and religious affairs: in the course of these conflicts the chief rules as to debate, divisions, order and the sequence of business were laid down in part by declarations of existing practice, in part by what were confessedly additions to it. The House of Commons in its struggle to maintain its position was obliged to make strenuous political efforts; and as a weapon for the protection of all the rights of the House and its members it fashioned a less flexible order of business, one which should afford fewer opportunities for pressure either on the part of the Crown and its ministers, or on the part of the Speaker, in those days generally a devoted partisan of the Court. This work was continued during the severe struggles of the parliaments of Charles I from 1625 to 1629. And when after the long interval of non-parliamentary government the representatives of the people again met in 1640, one of the first acts of the Commons was to pass a series of resolutions for the purpose of strengthening and establishing their procedure and of securing their right of self-government as expressed in their rules of business.[2] For the first time we have, at

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without, was established. In 1581 and 1585 there were cases of expulsion of members (*D'Ewes*, pp. 296, 352). (3) In 1593, the House reasserted its old right of priority over the Lords in the matter of money bills. (4) The right of free speech was repeatedly maintained against Elizabeth by obtaining her withdrawal in every serious case. See *Taylor*, "Origin and Growth of the English Constitution," vol. ii., pp. 202–208.

[1] See, for instance, the resolution of the 4th of March 1626 (*Parry*, p. 305).

[2] See resolutions of the Commons, 20th, 21st, and 25th April, 7th, 9th, 11th, 16th, and 26th November, 1st and 4th December, 1640, &c. (*Parry*, pp. 337 *sqq.*).

this fateful epoch in English history, a clear recognition of the indissoluble connection of parliamentary form with the fundamental problems of constitutional law, in fact, with the whole of domestic policy.

In his admirable biography of Sir John Eliot, the first great English parliamentarian and the leader in the struggle against James I and Charles I, Forster, discussing the first parliament of Charles I in 1625, makes a significant observation. He remarks that though the Commons in their twenty years' struggle with the Court had not yet gained much in the way of formal enactment, there had been gains of another kind, in the front rank of which must be reckoned the improved equipment in parliamentary organisation with which they faced the new king.[1] No doubt their principal successes had been in the department of parliamentary law which is described as Privilege—*i.e.*, the sum of the fundamental rights of the House and of its individual members as against the prerogatives of the Crown, the authority of the ordinary Courts of Law, and the special rights of the House of Lords. It was necessary first of all to secure these; without their support no free development of internal legislation in the House as to its duties, its rules and its special procedure could be looked for.

In this place we have to consider not so much the development of the privileges of the House of Commons as the secondary products of parliamentary autonomy, the rules adopted for the conduct of business. The great parliamentary combatants in the seventeenth century were well aware how much depended on these rules: this is no mere inference from the great development in procedure regulation, which, as we have seen, took place at the time; there is abundance of explicit proof that the leaders of the House had a clear insight into the importance of the problem. Perhaps the most direct evidence may be found in certain memoranda discovered among the manuscript papers left by Sir John Eliot, and referred to by his biographer. After giving a long list of what the House had ordered for the protection of its proceedings, Sir John Eliot adds: "I name

[1] *Forster*, "Sir John Eliot, A biography," vol. i., p. 233.

these inconsiderable things for the honour of that House. Noe wher more gravity can be found than is represented in that senate. Noe court has more civilitie in itself, nor a face of more dignitie towards strangers. Noe wher more equall justice can be found: nor yet, perhaps, more wisdom."[1]

It is not necessary for our purpose to give a detailed statement of the contents of all the orders as to the regulation of business; we are only engaged upon a survey of the course by which procedure has reached its present state. Details will be more suitably given in connection with the notes to the different chapters upon the corresponding portions of the existing law, which still shows many traces of its earlier form. At the same time a short summary may conveniently be given here. The matters dealt with cover almost the whole field of the regulation of business. At this period it becomes customary to fix a regular time for the sittings, the time chosen being from 7 or 8 in the morning until mid-day, and the Speaker is forbidden to bring up any business after the latter hour. The quorum of forty members for the competency of the House for business is settled; the adjournment or termination, as the case may be, of every sitting is made independent of the Speaker and placed, as a matter of principle, under the control of the House. Further, instructions are given to the Speaker as to the arrangement of the day's business and his powers against irrelevant or discursive speaking are precisely determined. Express prohibitions are framed against arbitrary debates on the order of business for the day, and also against the carrying on of a debate on more than one subject at a time. The principle is also laid down that the orders of the day are to give the amount which the House is to do, and that this is to be settled by the House itself by means of its orders. And by this time the custom has arisen of making the daily programme known to the House at the beginning of the sitting, after prayers. As a measure of discipline it is ordered that members leaving the House after the first business has been entered upon must pay a fine. The doors of the House are repeatedly locked,

[1] *Forster*, "Sir John Eliot," vol. i.. p. 238.

and the keys laid on the table, in order to secure the complete secrecy of the proceedings. The mistrust of the courtier Speaker comes out both in the formulation of the principle that the Chair is not entitled to vote, and in the rule that if the Speaker has any communication to make to the House he must be brief: he is to make needful communications to the House, says one of these orders, but is not to try to convince it by copious argumentation. The Speaker is expressly forbidden to give the king access to the bills which had been introduced, as he had done on former occasions. We find, too, at this time the establishment of the great parliamentary principle that no subject matter is to be introduced more than once in a session. Again, the order of forwarding bills to the Lords is determined, and the important rule laid down that at a conference between the Houses the number of delegates sent by the Commons must always be double that sent by the Lords. Finally, we should note, as of great importance, the development which took place in the use of committees and the institution of committees of the whole House. Sir John Eliot, in his papers, lays great stress upon the importance of this form of organisation. The Committee of Privileges, in which all election disputes were discussed, and the three grand committees (all of them formed as standing committees at the opening of each session) appear as ramparts behind which the House entrenched itself securely against the influence of the Court and Government. In all these directions, form and procedure had completely developed in the times of intense political life during the first half of the seventeenth century.[1]

The result of these constructive efforts is what must be called the *historic order of business* of the House of Commons. The peculiar nature of the circumstances under which it was produced has been of the utmost importance in the subsequent evolution of English parliamentary government. It must never be forgotten that this historic procedure came to maturity in a time of conflict between the Commons on the one hand and the Crown and the Executive on the other,

[1] The references to authorities will be found in connection with the historical notes in Book II.

and that many of its special features must be ascribed to this cause. Though the practice of more than three centuries was required before its different constituent parts reached their final shape, it is to this crisis that the fabric as a whole owes its permanent character. Many features of English parliamentary procedure which have come to be regarded as of the essence of parliamentary government, that is to say, of the system of conducting public affairs by free discussion among representatives of the nation, are in reality accidents due to the course of its history: they have been transferred to the general conception of this form of constitution and its working, and have grown into universal demands in the life of modern states. The most important of these characteristics which must be dwelt on here rests upon the recognition of the perfect equality of all members of the House: it is the assertion of freedom of parliamentary action, for each individual member and for the House as a whole, within the limits laid down by custom and enactment. Hence has grown a principle which is especially distinctive of English parliamentary life—the principle of *the protection of the minority* as a fundamental basis of parliamentary government. The establishment of the principle was no doubt assisted by the inherited political wisdom of generations, and by an instinctive psychological grasp of the parliamentary problem; it is none the less true that it rests upon the assumption of the complete equality of all members, the venerable and immovable basis of all procedure, both in theory and practice, and the legal foundation of all parliamentary action.

The full meaning of the principle of equality can only be appreciated by considering the position of the ministers of the Crown, who, as elected members, belong to the House of Commons: that their capacity of servants of the Crown gives them no precedence in the House, is a matter of far-reaching significance. In the time of Elizabeth the opposition between the "King in Council," the embodiment of administrative authority, and the "King in Parliament" began to emerge as the great political problem of England: but neither then nor subsequently did this opposition ever find a home on the floor of Parliament in the form of any constitutional institution. In the House of Commons the

ministers of the Crown were and are members, and members only. This, however, was made possible only by the resolute maintenance by the Commons of their corporate privileges, and of a conception that had come down to them from the period of the Estates—that of the *immediate legal relation existing between the King and the two Houses of Parliament.* The proceedings of the House of Commons in Elizabeth's time contain many testimonies to the jealousy with which the House insisted, even against such influential ministers as the famous councillors of the Queen, Sir Nicholas Bacon and the two Cecils, that the Government should recognise the constitutional principle of the equality of all the Commons.[1] On the other hand, it would be wrong to overlook the great influence which the Privy Council actually exercised on the course of proceedings in Parliament. Mention has already been made of the part which the Speaker had to play in the House: and it is of the utmost significance that the ministers of the Tudor and Stuart sovereigns kept the power of initiating legislation on important matters almost entirely in their own hands. The great legislative changes of the era of Henry VIII and Elizabeth, in the spheres of Church Establishment, Poor Law, and Civil and Criminal Law, were entirely the fruit of plans elaborated in the Council. The time, indeed, was one in which "paternal government" by the King's Council flourished—it was the period of the greatest power ever possessed by a "bureaucracy" in England. The change of the *Concilium Regis* into a Privy Council had begun under Henry VI; under Edward VI it

[1] Similar motives inspired the efforts, spread over a period of three centuries, to exclude from the House the holders of great offices under the Crown. A very characteristic episode is the following. On the 8th of April 1614, the House appointed a committee to search for precedents, whether an Attorney-General had ever been chosen and served as a member of the House of Commons—an order aimed at Sir Francis Bacon. On the 11th of April the committee reported "That there is no law must not be Attorney-General sitting, but that which is against all Privy to maturity solicitor, serjeant, and all knights of shires not residents, or the one hand. Upon this report it was resolved that Bacon "should for remain in the House, but never any Attorney-General future" (*Parry*, pp. 262–264). In *Porritt's* "Unreformed

[1] The references there is a detailed account of this question (vol. i., historical notes in Book II, Part iv.

received a new organisation and procedure, and its development into a supreme administrative court and ministry was completed. Sir John Fortescue, a great statesman, and the most important political writer of the fifteenth century, laid the theoretical foundation for this development and in all probability helped in carrying it through. With a clear insight into the facts he lays it down that it is in the province of the "council of the wisest and best disposed" to prepare proposals for laws to be brought before Parliament. The parliamentary practice of the sixteenth century carried this theory into effect. All the more important, therefore, to the Commons would be those rights which their procedure placed in their hands—free discussion, consideration in committee, and amendment. But as soon as the House of Commons—especially on Church matters—began to propound schemes opposed to those of the Crown and the Government, the right of initiative on the part of members not belonging to the Privy Council was distinctly asserted.[1]

We need not consider how the regulation of business and procedure were dealt with in the revolutionary times of the Long Parliament, or the forms adopted in the parliaments called by Cromwell as Lord Protector. In both cases we should have to deal with temporary phenomena. The restoration of parliament preceded the restoration of the monarchy, and, both politically and formally, re-established the actual and legal state of affairs which was in existence before the Puritan Rump's revolutionary seizure of all authority. But with this we come to the third of the periods which have been marked out.

[1] Fortescue's characteristic words are: "Thies counsellors mowe continually . . . comune and delibre . . . how also the lawes may be amendet in suche thynges, as thay needen reformacion in; wher through the parlamentes shall mowe do more gode in a moneth to the mendynge off the lawe then thai shall mowe do in a yere, yff the amendynge thereoff be not debatyd and be such counsell riped to their handes" ("Governance of England," chap. xv.; Plummer's edition, p. 148). An instance of the objection felt by the Crown to the exercise of initiative in political legislation by private members may be seen in Elizabeth's treatment of two bills on Church rites and ceremonies introduced in the session of 1572: she requested that the bills might be shown to her, and her request was complied with (*D'Ewes*, p. 213).

CHAPTER IV

THE ORDER OF BUSINESS AND THE DEVELOPMENT OF THE SYSTEM OF PARTY GOVERNMENT (1688–1832)

SINCE the Restoration of Charles II very great changes have been effected in the constitutional law by which England is ruled; of these a large proportion must be attributed to the period subsequent to the final expulsion of the Stuarts, and the establishment of parliamentary monarchy; but the alterations which have come about by express legal enactment have been confined within very narrow limits. None of the fundamental institutions of the state—Crown, Parliament, Judicature—have had their legal basis affected, or been essentially transformed. For nearly one hundred and fifty years from the accession of the Hanoverian dynasty a formal conservatism, which was soon raised to the dignity of a rigorous theory of the state, reigned supreme; but under its sheltering mantle there were carried out, in Parliament itself, the most far-reaching alterations affecting all its important functions. The work of the Whig aristocrats in overthrowing James II and making a revolutionary resettlement of the succession to the throne was astutely accomplished in peace, and with a minimum of constitutional change, by adopting the plan of calling a convention of the two Houses of Parliament: but this was not the full measure of their achievement, for they were able, after but a short period of uncertainty, and by the simplest conceivable expedients, to mould the new monarchy into a strict parliamentary form. The instrument they used was the system of party government acting through a cabinet drawn from the majority in Parliament.

There is no necessity to give an elaborate description of this system. We need only note that, while retaining the venerable form of the executive, the Privy Council, it has made the ministry a subordinate and integral part of party machinery and its parliamentary organisation. This was the

final and satisfactory solution of the great problem to which neither two revolutions nor Cromwell and his Puritan political thinkers had been able to find a key. It is needless to observe that it was found unconsciously; that is to say, that the complete transformation of the scheme of government was effected without its being recognised at the moment what would be the full consequences of each individual measure taken. The truly organic nature of the re-shaping of English constitutional law, which has been going on since the beginning of the eighteenth century appears in the clearest light when we remark the complete maintenance in outward form of the constitutional mechanism taken over—the Crown with its prerogatives, the Privy Council as the body of the servants of the Crown summoned by the King and dependent on him, and, lastly, the two Houses of Parliament with their already venerable constitution. Preservation of forms served, of course, only to increase the change in the political content of all the great organs of state, and their dynamical relations one to another. It has often been said, and is no doubt true, that those who were chiefly responsible for, and gainers by, the Revolution of 1688 and the new system which it inaugurated, were the Whig aristocrats who dominated the House of Lords: but in the England which was thenceforward to be governed by Parliament the House of Commons was bound to become the centre of politics and of the vital power of the state. This was not merely a consequence of the old constitutional precedence of the Commons in relation to the Crown: it flowed also from the social and political fact that the urban and rural gentry, who held a commanding position in the House of Commons, had since the Restoration been rising more and more to a place beside the great aristocratic families: the fact that the first great English parliamentarian in the modern sense, Sir Robert Walpole, was a commoner, shows in the clearest way what was taking place.[1]

Two results inevitably followed. In the first place the Whig party in the Lords, powerful both economically and

[1] "Walpole was the first minister who made the House of Commons the centre of authority." (*John Morley*, "Walpole," p. 73.)

socially, had to make every effort to strengthen its influence on the composition of the Lower House, so as to increase, or at all events to maintain, its power. And again, there was a constant struggle on the part of the Whig gentry, who had allied themselves with the great Whig families in a common resistance to the Jacobite Tories, to keep for themselves such power as they had gained. Both tendencies were immediate consequences of the constitutional change completed by the accession of the Hanoverian dynasty; and their joint effect was the adoption of a political conception and method best described as the flower of *parliamentary conservatism* in England.

The readiest expedients available for the party which came into power with the Revolution, in its efforts to preserve its supremacy, were these: first, the maintenance unchanged of the old parliamentary constitution which the Whigs had inherited from the days of Tudor and Stuart misuse of the royal prerogative; and, secondly, the strict exclusion from political life of all elements in the upper and middle classes which were opposed to the Established Church.

It is instructive to note that the only large measure of constitutional change which found its way to the statute book after the Bill of Rights (1689) and the Act of Settlement (1701) was the Septennial Act (1716). The extension of the period of duration of parliament to seven years supplied the keystone to the structure of parliamentary party government by the oligarchy. It materially weakened the dependence of the House of Commons on public opinion and on the electorate, and correspondingly increased the power of the Whig majority as against the Crown.

Retention of the existing parliamentary law in the narrower sense of the term harmonised well with the conservatism which was so deeply ingrained in the political relations and circumstances of the time. The period from the Revolution to the Reform bill is, as a matter of fact, that in which the least change in the rules of procedure took place. Very few procedure orders of any importance are to be found in the journals of the House of this time, and still fewer are the new maxims expressly enacted

or declared.[1] In the inner life of Parliament, too, it was a period of peaceful retention of the system won in the battles of the seventeenth century. Its political frame of mind was embodied, so far as the order of business is concerned, in a man who has been called the greatest Speaker of the century—Arthur Onslow.[2] He was the first holder of the office to recognise the order of business as a separate and important problem of constitutional law and politics, and to express this in significant language. What we learn about him from his pupil Hatsell, the Clerk of the House, is the best index to the manner in which the parliamentary conservatism of the eighteenth century operated in the sphere of the order of business. After his great and accurate knowledge of the history of his country and of the minuter forms and proceedings of Parliament, the distinguishing feature, says Hatsell, in Onslow's public character was his regard and reverence for the British constitution as it was declared and established at the Revolution. In another connection, when giving an account of the chief rules to be applied by the Speaker in keeping order in the House, Hatsell writes in a particularly noteworthy way about Onslow as Speaker: "All these rules Mr. Onslow endeavoured to preserve with great strictness, yet with civility to the particular members offending; though I do not pretend to say that his endeavours had always their full effect. Besides the propriety that in a senate composed of gentlemen of the first rank and fortune in the country, and deliberating on subjects of the greatest national importance—that, in such an assembly, decency and decorum should be observed, as well in their deportment and behaviour to each other, as in their debates —Mr. Onslow used frequently to assign another reason for adhering strictly to the rules and orders of the House:— He said it was a maxim he had often heard, when he was

[1] The only matters which deserve mention are the two Standing Orders as to the proposal of new financial measures (1707 and 1713) and as to the discussion of petitions.

[2] See, for what follows, *Onslow Papers* in the Reports of the Historical Manuscripts Commission, XIV., Appendix, Part IX., pp. 458 *sqq*. *Hatsell*, "Precedents of Proceedings in the House of Commons," vol. ii., 3rd edn., pp. vi, vii, 224, 225, 4th edn., pp. vi, vii, 236, 237; *Porritt*, "The Unreformed House of Commons," vol. i., pp. 448–454.

a young man, from old and experienced members 'that nothing tended more to throw power into the hands of Administration, and those who acted with the majority of the House of Commons, than a neglect of, or departure from, these rules—that the forms of proceeding, as instituted by our ancestors, operated as a check and controul on the actions of ministers; and that they were in many instances a shelter and protection to the minority against the attempts of power.'" Horace Walpole, perhaps the best informed man on the subject of the England of his time, remarks in his memoirs, that Speaker Onslow was so painfully minute in his observance of the rules as, at times, to become "troublesome in matters of higher moment." It was Onslow's action and the tradition of his methods, handed down far into the nineteenth century, which gave to the historic order of business the shape which the reformed House of Commons in 1833 found ready for its use, and which lasted in full vigour down to the third quarter of the nineteenth century.

The constitutional and political ideas at the root of the forms of procedure, which had grown up under the influence of the fierce parliamentary struggles of the seventeenth century, were helped rather than hindered in their vital development by Onslow's persistence in old-established ways during his thirty years' tenure of the presidency of the House. It is to be remembered that the first attacks of rationalist Radicalism upon the parliamentary oligarchy, then firmly entrenched behind the rampart of the House of Commons, fell in this period—those attacks indissolubly associated with the names of John Wilkes and the author of the Letters of Junius, and most of all with the fame of the young Burke. Now the insistence on the unwritten law of Parliament and the traditional forms of order, as embodied in Onslow, had one important effect on these struggles. Without its aid public opinion and the aspirations of the unenfranchised masses of the nation would have sought in vain to find expression in Parliament, and the voices of the few theorists among the ruling classes who espoused their cause would have been silenced. These forms, as we know, were worked out in the seventeenth

century, in days when Parliament and Crown were locked in a struggle over the political and religious questions which moved the nation to its depths, when the greater part of the Commons, often the whole House with the exception of the "Courtiers," was in the sharpest antagonism to the Crown and its ministers. One consequence of such a historic origin was that the procedure of the House of Commons, its order of business, was worked out, so to speak, as the *procedure of an opposition*, and acquired once for all its fundamental character. A thoughtful critic of England has with great truth emphasised the fact that the English nation invented the notion of constitutional opposition as a pitiless but legal antagonism in affairs of state, carried on by parliamentary methods.[1] The institution is deeply implanted, as a no less keen modern judge of England remarks, in the psychological character of the Anglo-Saxon race, in its indomitable joy in labour, in its conspicuous craving for action.[2]

This characteristic quality has for the last three centuries been working in English political life with ever-increasing force: it has produced in the mother-country and her daughter lands the remarkable organisation of modern political life with its ceaseless agitation of all kinds. Party life, the press, parliamentary institutions, are all deeply penetrated with the delight felt by each individual as he throws himself into the midst of the political battle between opinion and opinion, between party and party, often merely for the sake of the battle itself. Under such circumstances each is accustomed in his turn to see himself and the party view of his adoption in the minority, struggling for life—in short, in opposition: and in the nature of things there grows up a conception of political life which recognises that the maintenance of honourable rules and methods of fighting and the erection of stout barriers against inconsiderate use of mere preponderance of power are the most urgent demands of political wisdom, nay are necessary requirements for the pro-

[1] *Emerson*, "English Traits," ch. v.

[2] *Boutmy*, "Essai d'une psychologie politique du peuple anglais au xix siècle," 1901, part i., chap. i., pp. 3-29; part ii, chap. ii., pp. 204-219; English translation, pp. 3-20, 141-151.

tection of the state. Traces of such a view can be found in much earlier days, but the nation's struggle of nearly a century's duration against absolutism in politics and religion was the school in which it was fully worked out. It is intimately bound up with the practical sense of the nation, which is ready to accept facts and to subordinate itself to a firm will, and with the sobriety which impels it to urge the supporters of opposing tendencies and interests to make mutual concessions and to strive for peaceful compromises. On this, in the last instance, rests the deep-rooted national conception of opposition as a necessary and healthful factor in public life.

The legal opposition under James I and Charles I led no doubt, in the end, to civil war and revolution, and therefore to a negation of the principle of parliamentary rule. The differences of view were too deep and penetrating for peaceful decision. But the manner and form in which the restoration of monarchy took place show distinctly how little the abandonment of legal methods was in accord with the real character of the English nation. From that time to the present the history of England, at all its crises, has been a history of parliamentary opposition, finally victorious, but always moderate in the hour of victory, and always legal in its action.

So far, then, as parliamentary government is concerned, the development which we have traced had the important result of imposing upon the whole procedure of the House of Commons, as fixed by the struggles of the seventeenth century, the methods and ideas of a legal opposition by a minority. It may fairly be said that, at the critical epoch, the whole House of Commons, as against the Crown and its ministers, felt itself to be a minority, bound, as the weaker party, to defend its position.

The above-quoted words of Speaker Onslow are, then, more than a proof of the deep insight into parliamentary order to which this great parliamentarian had attained; they express also the special significance in the history of its development of the period of parliamentary oligarchy. It is the chief merit of the parliamentary generation represented by Onslow that it preserved the character of the historic order

of business as, first and foremost, a protection of the minority. The great importance of an organic growth of internal parliamentary law in developing the political strength and constitutional ideas of the nation was only too soon to be shown, namely in the early years of the reign of George III, when the great majority of the corrupt House of Commons was constantly at the disposal of the King and his Ministry. Owing to the vital connection of parliamentary procedure with the form into which the constitution had been distorted for the support of the oligarchy, the all-embracing conservatism of the day had been driven to maintain the two together; in the procedure thus protected, the small minority of patriots and reformers found a valuable weapon with which to carry on their resistance to royal intrigue.

Among contemporary observers in Europe there was but little comprehension of the real characteristics of the English domestic and foreign politics of the *ancien régime*, namely, party government and violent struggles between the factions into which an essentially homogeneous and oligarchically constituted ruling class was split up; the counterpart in modern English political life no less frequently suffers in our own day from astonishing misconceptions on the part of Continental critics; and the phenomenon is not properly intelligible to anyone who does not understand the machinery which it always presupposes.[1] This is none other than the parliamentary procedure peculiar to the House of Commons, historically gained and resolutely preserved; we have just been tracing its special character. To maintain the parliamentary reign of the oligarchy it was necessary to have the lists exactly marked out and levelled and to fight under a system of literally sacrosanct rules of battle; even such conditions would have been insufficient had not the tradition of generations produced the assumptions of mind and spirit indispensable for such parliamentary tournaments. By

[1] In England itself there has been from the beginning of the eighteenth century, a growing insight into the peculiar nature of the constitution developed since 1688. As might have been expected, this has been especially shown by the adversaries of the Whigs who were its authors. The series of great anti-Whig statesmen and writers begins with Swift and Bolingbroke and ends with the young Disraeli, whose pungent description of the "Venetian" constitution of England will be remembered.

no other means could perfectly legal methods in Parliament have produced lasting results from what, in spite of the merely factious divisions of party, were real and deep-seated antagonisms of interests, such, for instance, as those between the Imperialist Pitt and the Jacobin Fox. In no other way could the nation have brought to a happy conclusion such struggles as those over Catholic Emancipation, Franchise Reform and Free Trade. Only a nation which had come to expect from some quarter unceasing opposition to every single institution of law and state and to regard it as natural, nay indispensable and healthy, could have created what has since come to be regarded as the special character of the English parliamentary system. The most important factor in its growth and establishment has been the adherence to the historic order of business, inviolate and unimpaired by the forcible action of any majority.

The fact that it was in the eighteenth century that parliamentary law as a whole found its earliest comprehensive literary treatment, indicates how strong was the influence on parliamentary customary law of the conservatism of the time. We refer, of course, to the four volumes of "Parliamentary Precedents" published by Hatsell, the above-mentioned Clerk of the House and the pupil of Speaker Onslow: though somewhat uneven in merit, his work, with its depth of expert knowledge and erudition, gives an admirable picture of parliamentary procedure at the end of the eighteenth century as a development of the traditional practice of many hundreds of years. Hatsell is very far from presenting a critical or abstract theory of the law of parliamentary procedure and privilege; he himself describes his work with great modesty as an index to the journals of the House and other historical documents from which alone, as he remarks, can be gained a complete acquaintance with the law and procedure of Parliament. The treatise, indeed, is a monument of care and industry, and also of perspicuous arrangement. The mode of exposition adopted is purely that of commentary. Under the separate headings into which Hatsell divides his four volumes he first collects the corresponding precedents and decisions of the House taken from the journals, and upon these follow under the title of

"Observations" his own remarks, which, partly in the text and partly in footnotes, exhaust all the authorities and at the same time give valuable additional material from the author's own experience, the practice of Speaker Onslow and the traditional customs of the House.[1]

From Hatsell's account we gain a picture, clear, comprehensive and with but few omissions, of the historic order of business in the form which the eighteenth century handed on to subsequent generations. In endeavouring to extract the distinguishing characteristics which stand out as the products of the life of Parliament during the eighteenth century, the first thing that forces itself upon our notice is what we observed before in connection with the journals, namely, the lack of really constructive changes in the sphere of procedure. But the strong political persistence, which thus appears as the keynote of the period, by no means implies that the power of parliamentary custom in the formation of law had been impaired. Quite the reverse: within the fixed

[1] Hatsell's four volumes cover the whole ground of parliamentary law. The second volume alone is properly devoted to what we call the order of business, the first treats of the privileges of Parliament, the third is divided into two main parts, of which one describes the relation of the House of Lords to the Commons, and the other gives an account of financial procedure, the fourth volume is concerned exclusively with the procedure for accusations against ministers, with impeachment. For our purpose only the second volume and the financial part of the third volume are material. Hatsell's method, as described above, accounts for the deficiencies of his work. The most serious of these is that his scheme depends too much on the journals; in consequence certain forms of procedure, which were elaborated before the commencement of the journals, are not dealt with by him at all—*e.g.*, the whole *modus procedendi* in the case of public bills, private bill procedure, the organisation of the House, &c. Another serious defect is that, in spite of the copiousness of his historical material, there is no proper account of the genesis of the forms of procedure. It is, moreover, impossible to overlook the shortcomings in composition, which are bound to occur in a work consisting of four volumes, published singly. But even allowing for all just criticisms, if we wish fairly to estimate his great achievement we must compare it with the whole earlier literature of the subject. His treatise both in time and on the score of merit was the first great literary production of its kind, and remained the standard work until it was superseded by that of Sir T. Erskine May. The great respect in which Hatsell was personally held in the House as an authority on procedure, and his extremely conservative conception of the order of business, are described in (amongst other documents) the diaries of Speaker Abbot. See *Lord Colchester*, "Diary," vol. i., pp. 76, 78, 84, 92.

bounds set by its existing arrangements and rules the activity of the House, which from year to year increased continuously in range and importance, produced a wealth of decisions and customs which extended and added to the forms and principles of the historic procedure, and by a hair-splitting ingenuity of interpretation adapted them to the ever-varying needs of parliamentary practice. We have reached what may be called the Alexandrian period in the treatment of the order of business. It was a time when keen delight was taken in the process of distilling from the appropriate rule every subtlety necessary for the solution of the particular question in hand. Upon points arising merely incidentally long debates took place and weighty decisions of the Speaker and the House were adduced; the merest trifles which affected form were treated with the utmost solemnity. This is the source of what strikes the reader as the second characteristic of the procedure of Parliament as mirrored by Hatsell—an extraordinary refinement, as it were a chiselling and ornamentation, of the traditional forms and rules of procedure, and in consequence a superfluity of parliamentary transactions which the rules treat as obligatory. Procedure takes a character at times unwieldy and at times ceremonious. It is to be remembered that in the same period procedure in the English courts of law was carried to the summit of its long notorious formalism, and that, as a result of an ancient and inherent tendency, both civil and criminal actions were encumbered with countless technicalities, and were carried on by means of forms of pleading, which gave rise to many legal quibbles and tricks of advocacy. These, it may be remarked in passing, were the subject of many magnificent passages in the classic fiction of the nineteenth century, but now belong only to the history of law.

It was just the same in the High Court of Parliament. Here, too, after the seventeenth century had taught the Commons to treasure the political significance of forms, the further step was taken of cherishing and amplifying forms for their own sake. This tendency was encouraged by the fact that the House already possessed many extensions of its old forms and procedure which had been devised in the days of defensive struggle against the Crown and the courtiers

in the House, and which were due to mistrust and anxious caution. In the days when party government took its rise there seemed even more occasion for perfecting checks, as a guard against being taken unawares by the majority of the moment; for it is a sound reading of human nature, based on experience, that power is able to drown the scruples of majorities even more rapidly than those of individuals. The oligarchical character of parliamentary rule from the time of William III onwards had a similar effect in the same direction although for a different reason. The strife of parties under Bolingbroke and Harley, under Walpole, Pelham and Pulteney, under the two Pitts, and such leaders as Rockingham, Burke, North and Shelburne, was a contest between men of the same social standing, a struggle for place amongst the flower of the English aristocracy. In such an atmosphere the struggle became a kind of political game, with the attainment of supreme power in the state for prize, and membership of the ruling class of society for an indispensable qualification. And, as in the case of the old English popular games, there would grow up spontaneously the notion of the strict inviolability of the rules of fighting and of play; nay, there would be delight in their subtle extension, giving the opponents more and more opportunities for the display of presence of mind and leading to ever new combinations and applications. It is well worth while to keep this point of view before one when following the course of the political storms at the time of the American rising by the help of contemporary sources, pamphlets, letters and memoirs, or when reading the debates during the attack by Fox's coalition upon the twenty-four-year-old Prime Minister Pitt: without this clue it is impossible to grasp the essence of the first period of blossom in modern English parliamentary history.[1]

[1] While emphasising the social similarity of the oligarchy, we must not overlook the fact that, at all events for the first half of the eighteenth century, there was a deep and serious political division between Whigs and Tories: it is not till the time of George III that the familiar simile of the see-saw of politics is perfectly appropriate. And by that time new political forces were beginning to issue from the depths of national life, and to take up a position of opposition to both Whigs and Tories, as representing the ruling classes. For some striking remarks on the characters

There was a close connection between the oligarchical structure of the House of Commons and the small share which relatively and absolutely was taken in debate by the great majority of members. As a rule the parliamentary battle was a combat between leaders, between protagonists. Through the whole of the eighteenth century we hear complaints, too, of bad attendance at the House, of the frequent lack of a quorum.[1] "In the middle of the eighteenth century," said the late Prime Minister, Mr. Arthur Balfour, in his speech on the 30th of January 1902, introducing his new rules, "and indeed to a very much later period, the difficulty was not to check the flow of oratory, but to induce it to flow at all. The makers of the rules exhausted their ingenuity in finding opportunities for gentlemen to speak, and offering them temptations to air their opinions, or to deal with the case of their constituents."

Excessive development and complication of parliamentary procedure appeared in nearly every department of the rules. It showed itself in the application of the form of the committee of the whole House to the discussion of all bills, which was only adopted, as an exclusive method, during the course of the eighteenth century; in the use of the same form for the repeated discussion of all money questions in the whole House; in the elaborate decisions upon amendments, the mode of putting the question and the ceremonial of divisions; in the numerous artifices which enabled any kind of subject to be brought up at any time, as, for instance, by debates on petitions, by the hearing of witnesses and advocates at the bar of the House and by many other methods. But the most flagrant instance of multiplicity of forms was the most important case of all, namely, the laborious observance of the stages in the discussion of a bill. It was pointed out to the committee of investigation in 1848 that no less than eighteen different questions, each with its corresponding division, were required for the passage of a bill through the House, without reckoning those of the committee

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of the two parties, see the thorough work of *F. Salomon*, "William Pitt," vol. i., pp. 51–66.

[1] See *Hatsell*, vol. ii., 3rd edn, pp. 165 *sqq.*, 4th edn., pp. 173 *sqq.*, and the comments there made on such cases.

stage.[1] And it must be remembered that this was merely the normal skeleton of the discussion of a bill, irrespective of all the conceivable variations of subsidiary motions, instructions and motions for adjournment.

Lastly, we must refer to one important matter in which there is a sharp distinction between the rules described by Hatsell and those of the present day. It is remarkable that Hatsell gives no information whatever about the actual distribution of the course of business in the House. We perceive here, no doubt, an oversight on the part of the learned Clerk: even in earlier descriptions we have some account of the solution of this problem. Surely also we might have expected from Hatsell some statement as to the method of arrangement of the daily programme and as to the distribution of business throughout the session. But from the facts that there are in the journals no resolutions as to principles for determining these matters, and that Hatsell does not concern himself with them, we may draw an unmistakable inference as to one characteristic of the parliamentary procedure of this period, namely, that the large and difficult problem set before the modern House of Commons in arranging its daily business and its work as a whole was entirely unknown to the procedure of that day. And hence flows a further characteristic of the time—the comparative freedom of each individual member and the comparative looseness of the whole House in fixing the succession of the items of business to be taken and the debates thereon. It was in no small degree a consequence of the essential difference between the functions of Parliament in the eighteenth

[1] The Speaker, Mr. Shaw Lefevre, stated them to the committee as follows.—(1) That leave be given to bring in the bill. (2) That this bill be read a first time. (3) That the bill be read a second time on (a named day) (4) That this bill be now read a second time. (5) That this bill be committed on (a named day). (6) That this bill be committed. (7) That the Speaker do now leave the chair. Then after it has passed through the committee—(8) That the report be received on (a named day). (9) That this report be now received (10) That this report be now read. (11) That these amendments be now read a second time. (12) That the House agree with their committee in the said amendments. (13) That this bill be engrossed. (14) That this bill be read a third time on (a named day). (15) That this bill be now read a third time. (16) That this bill do pass. (17) That this be the title to the bill. (18) That Messrs. A. and B do carry this bill to the Lords. Report (1848), Minutes of Evidence, Q. 21.

century and in the present day that, in spite of the absence of any strictness on this head, the despatch of business went on easily and smoothly. There was then no constant stream of reforms on a large scale, there were no bills with hundreds of clauses and countless technical details of a contentious character.[1] Domestic legislation for the whole of the period of parliamentary conservatism was confined to small alterations in administrative law, to special and local enactments. The centre of gravity of the action of the House of Commons lay in the region of foreign and colonial policy and the financial measures rendered necessary by the decisions on such subjects. The manifold forms of financial discussion furnished the framework into which the members of the house could insert the motions which arose out of the political situation or party tactics. Finance was also the fulcrum of the parliamentary activity of Government. Moreover, the driving power in Parliament was mainly due to the private initiative of individual members, the party leaders on both sides determining the disposition of the time of Parliament and providing for the orderly despatch of its work.[2] The Government had no need as yet of any special time assigned to it by the rules to enable it to get through the parliamentary duties laid upon it. It seems to us remarkable that such a state of affairs could continue without raising difficulties, and that the party Governments were able to discharge their parliamentary obligations in comparatively short sessions, although any member could, on his own initiative, raise a new debate at any sitting and dis-

[1] *Townsend* ("History of the House of Commons," vol. ii, p. 380) gives the following figures to show the increase in the burden laid upon Parliament. These were passed:—

Under	William III	(1689–1702),	343	public and	466	private acts.
„	Queen Anne	(1702–1714),	338	„ „	605	„ „
„	George I	(1714–1727),	377	„ „	381	„ „
„	George II	(1727–1760),	1,477	„ „	1,244	„ „
„	George III	(1760–1820),	9,980	„ „	5,257	„ „

[2] Characteristic instances may, for instance, be found in the memoirs of Speaker Abbot: as a young member he proposed and carried in the sessions of 1796 and 1797 important reforms as to the promulgation of laws and the arrangement of the statute book. See *Lord Colchester*, "Diary," vol. i., *passim*: a particularly clear proof of the importance of private initiative is given on p. 204 (16th June 1800).

place Government motions by a motion of his own. The explanation is to be found in the strictly parliamentary character of the Government, and, in the last resort, by the social structure of the House. The House of Commons in the eighteenth century was not merely an assembly of gentlemen, it was a selection from an economic and social ruling class, and represented only a comparatively small section of the nation.[1] The contest itself as well as the smooth conduct of business reflected, therefore, above all things the feeling of social equality which existed among the combatants. Under such conditions there naturally arose a strong sense of responsibility. The ruling class, composed of the aristocracy and gentry and the men of talent admitted to their circle, considered themselves accountable not only for the national honour, but for the whole welfare of the country, which depended upon the action of Parliament; and their feeling was so strong that even in the sharpest party conflict no faction ever dreamed of making the procedure of the House a subject of their contention. For it was a tacit assumption of the noble parliamentary game that it was not to be brought to a deadlock through any party's disclaimer of the cherished rules, which had been tested for centuries. Thus any use of obstructive tactics was as far removed from the minds of the minority as was from those of their opponents the thought of using their power to overwhelm the minority or to make a change in the rules which would have that effect.[2]

[1] Lord Colchester gives the following social analysis of the newly-elected parliament of 1796 (Diary, vol i, p. 63):—

17 Irish peers.
33 eldest sons of British peers.
83 other sons of peers, English, Scotch, and Irish.
89 knights and baronets.
38 lawyers.
55 merchants, &c.
58 military, &c.

[2] Dislike of heroic measures was very characteristic of those days: the plan, ascribed to the coalition against the younger Pitt in 1784, of refusing supplies was looked upon as an unheard of innovation, and was, in point of fact, not carried out. And yet the constitutional doctrine on the Continent not long afterwards was, that refusal to vote the budget was one of the regular weapons of parliamentary parties—was, in fact, the corner stone of a representative constitution.

Regarded from this standpoint the century and a half of parliamentary government from 1688 to 1832 constitute the true golden age of the English parliamentary system. In spite of all the antagonisms and mutual reactions caused by the ambitions of the leaders and the differing interests of the groups they represented, the social harmony of the various sections of Parliament produced a harmonious result. For all parties and sections of the whole governing class united in maintaining as the cardinal conception of the state that the machine of government must never be brought to a stop, that the function of Parliament must never be risked in the struggles of party.[1] With the almost mystical reverence for the existing constitution which gave this class such power, there grew up a profound respect for the traditional

[1] The self-imposed parliamentary discipline of the parties accounts to some extent for the undeniable fact that in the parliaments of the eighteenth century there was much less desire on the part of members to speak than there is now. It cannot be said that the art of oratory was unknown to the times of Walpole and Fox: they form the first great period of classical oratory in the House the fame of which still lives in a kind of oral tradition among the present generation. But on the other hand it is unquestionable, that in the House of Burke and Fox, when parliamentary oligarchy and corrupt constituencies flourished, only a small band of leaders was in the habit of speaking. We may see this by reference to *Townsend* ("History of the House of Commons," vol. ii., p. 390), who points out the great increase of speakers and speeches in the first third of the nineteenth century. The old Tory Sir Robert Inglis, in one of his speeches on the Reform Bill (1831), said: "Formerly very few members were wont to address the House; now the speaking members are probably not less than four hundred." And of the Irish, Townsend adds, not four of the hundred were wholly silent. One of the chief reasons for this quantitative strengthening of the debates was the alteration in the relation of members to the outside world, to their constituents. Townsend gives interesting examples out of contemporary memoirs showing how much the more modern members felt the necessity of calling attention to themselves by making speeches. The speeches, too, became longer. At the beginning of the eighteenth century a speech of an hour's duration was considered long. With the embittered struggles of the opposition against Lord North, speeches of two, three or even more hours came into fashion. In 1795, Abbot remarks in his diary: "It seems agreed on all hands that the style of parliamentary debating is grown intolerably diffuse and prolix. The most marked period of the introduction of long speeches was Sheridan's five hours' speech upon the charge against Hastings" (*Lord Colchester*, "Diary," vol. i., p. 24). Brougham had, both before and after 1832, the reputation of being the Whig speaker the length of whose speeches was most to be dreaded; once he made a speech on law reform which lasted for six hours (*Townsend*, vol. ii., p. 395).

principles and forms of procedure with the maintenance of which their power was bound up. The feeling has its deepest roots in the conservative reverence implanted in the Anglo-Saxon race for that which has been handed down, for the inherited arrangements, forms and symbols of the life of the state. And at the same time there grew up among the ruling classes of England, who had assumed full control of government but had likewise shouldered the full burden of answering for the national welfare, that feeling of political responsibility which has so strikingly distinguished them, and the praises of which have so often been sung—a feeling without which no self-government, whether aristocratic or democratic in type, is possible. Only in such a political school could the nation have gained that moral courage, peculiar to English statesmen, which enables its possessors to face with calmness an enforced curtailment or destruction of their power, and even, in the interests of the state, to smooth the way of their opponents to office and to make the transition to the new state of affairs easy. In the great political crisis which took place a few years after the first Reform Bill there was a strong temptation placed in the way of the Tories, who had become used to power, to throw the Liberal party from the saddle, by a policy of passive resistance: but the old Duke of Wellington, a typical Englishman, resisted it, remarking laconically, "The Queen's government must be carried on." With such a conception guiding not only the leaders but also great parties parliamentary tactics would never be factiously employed, for the purpose of gaining party advantages, in obstructing the working of the machine of state itself. It may well be that this feeling towards the state on the part of the old English parliamentary parties grew out of the consciousness that they were themselves "the state," *i.e.*, that in them all the power of the state was embodied. But, however advantageously the constitutional arrangements adopted might work for the private interests of the governing classes, personally, socially and economically, it would be a mistake to fail in recognition of the fact that reverence for the constitution was closely bound up with a deep sense of serious responsibility for the fate of the nation. Still less must it be ignored that an

inestimable tradition as to the whole conception of parliamentary government was thus created, and, with the increase of democracy in the nineteenth century, handed on to the other classes who acquired their share of power.[1]

We have now described the conservatism to which the historic order of business owes its undisturbed continuance far into the nineteenth century, and traced the causes which brought it about. There were, no doubt, in the latter half of this period indications of coming change. Two of them are so important that they must be mentioned here. First: in the year 1806 it was laid down as a rule that notice of all motions, except those of a purely formal nature, must be given not later than the day before they were to be brought up.[2] Secondly: about the same time the House began, for the convenience of the Cabinet, to adopt the custom of reserving one or two days of the week for Government business, by giving Government orders of the day precedence over all others.[3] Contemporaneously the notion, expressed

[1] As opposed to the depreciatory judgment so often passed in modern times upon the English parliamentary oligarchy of the eighteenth century we may set the testimony of Mr. Gladstone, the great statesman who formed a living link between the two classical periods of parliamentary history. In 1877 he wrote, "Before 1832 the parliamentary constitution of this country was full of flaws in theory and blots in practice that would not bear the light. But it was, notwithstanding, one of the wonders of the world. Time was its parent, silence was its nurse. Until the American revolution had been accomplished it stood alone (among all great countries) in the world. Whatever its defects, it had imbibed enough of the free air of heaven to keep the lungs of liberty in play. . . . It did much evil and it left much good undone; but it either led or did not lag behind the national feeling and opinion." (*Gladstone*, "Gleanings of Past Years," vol. i., pp. 134, 135.)

[2] Speaker Abbot (Lord Colchester) makes the following note in his diary (vol. ii., p. 41): "Conversation on the necessity of notices of motion. Supposed rule of present practice, that there should be notice of *all* motions except for customary accounts and papers, &c." But twenty years before this notices of motion were already quite customary. See, for instance, *Parliamentary History*, Debates of 1780, vol xxi, 147. "Lord North said, as he saw it was likely to provoke debate, he should not move then, but wished what he had said might be considered merely as a notice." Further instances may be found, *ibid.*, 622, 885, 888, and elsewhere.

[3] *Sir Erskine May* ("Parliamentary Practice," p. 258) traces the origin of this practice to an order of the House of 15th November 1670. "That Mondays and Fridays be appointed for the only sitting of committees to whom public bills are committed, and that no private committee do sit on the said days." This appears very doubtful. For the important

in these changes, that on the Government for the time being lies the duty of "leading the House," began to take definite shape, and to exercise an influence on the whole extent of parliamentary life. These reforms are phenomena of great constitutional importance.

At the beginning of the nineteenth century the system of party government, by means of a Cabinet composed of members of the majority in the two Houses of Parliament, appears as an accomplished fact. The time had finally passed away during which the rules were drawn up and maintained by the representatives of the people or by great parties in the nation as their sharpest weapon and surest defence against the Crown and its servants. In the conflicts of George III with his ministers and the House of Commons, the flames of the struggle of past centuries flickered up with diminished intensity, and finally died away. Since the beginning of the nineteenth century, an English Ministry has been in effect nothing more than a joint committee drawn from the two Houses of Parliament for the conduct of the business of the state—a committee in the personal composition of which the Crown, so far as the Prime Minister is concerned, still exercises some influence, but which for its political life depends on a constantly testified maintenance of the confidence of the House of Commons. With the new type of Government the conception of the relation between House and Ministry, which underlay the historic order of business was bound slowly but inevitably to lose all justification. The traditional prolixity of the procedure of the House, and the uncertainty as to the completion of its tasks caused by every member having complete freedom of initiative, were serious hindrances in conducting the business of the state, which could not fail to be recognised by the House itself with constantly increasing clearness. *We have, then, indicated the point from which the disintegration of the historic order of business must needs start and proceed.* The process was made imperative, and that in a definite way, by the great changes in domestic

point is not the reservation of days for public bills, but their reservation for Government business. Not until the greater part of public bill legislation was monopolised by the Government did the reservation of Government nights become unavoidable.

policy introduced by Catholic Emancipation in 1829 and Franchise Reform in 1832, which opened a way into the venerable House of Commons for the Irish and for the principle of democracy. Thence came a change of a deeply penetrating nature in the social structure, the political spirit and the personal character of the House. At first slowly, and then with ever-increasing speed, there was manifested a collection of forces the resultant effect of which on the life and procedure of the House was at first change and finally revolution.

It is the task of the next part to describe in detail the course of this historical and political process.

PART II

Reforms in Procedure since 1832

CHAPTER I

Reform of the Antiquated Procedure (1832–1878)

THE reform of the franchise in 1832, which was so momentous and decisive an event in modern English history, marks also an epoch in the history of the procedure of the House of Commons. The summons of the first reformed House is the starting point of a series of attempts, some successful, some unsuccessful, to improve the mode of conducting parliamentary business. The new generation of English politicians had overcome all opposition to extension of the franchise, and at the same time had put an end to a condition of things in the constituencies and their distribution, as well as in the legal basis of the House of Commons, which had almost amounted to a national peril. In the first parliament returned upon the new suffrage the new men began, with a zeal unprecedented in such a conservative country, to carry out reforms in all provinces of social life, legislation and administration; and similar efforts were made, from the outset, in the regulation of internal parliamentary life, the order of business in the House of Commons. The nineteenth century saw in England an extraordinarily comprehensive movement of reform the course of which may be compared to that of a series of waves: the eager reforming zeal of a period of some years was followed regularly by a short stage of hesitation and pause, until new circumstances and new men took up, continued, and completed the changes that had been set on foot, doing their work at times almost with the rapidity of a storm. This simile may be applied to

the history of the self-regulation of Parliament as well as to nearly all departments of legislation. Legal customs with centuries of life behind them, after peacefully serving for many generations, were cast aside, while others appeared in their place or for the first time received settled form. And here as in other fields of action Parliament, during the nineteenth century more than in any former time showed itself under the sway of a radicalism which, starting from considerations of pure utility, was prepared to lay aside old forms and rules and to adopt alterations as soon as the practical necessity for them was proved. True : but once more we have to observe the characteristic of the modern English age of reform. Radicalism provides only that factor in reform which pushes on, moves, destroys the old and points in the direction of the new. But, in England, reform itself has been the result of an effort, made by the mass of the nation as well as by the large majority of its representatives in Parliament, to retain all such traditional rights and forms as have vitality, to add only what is necessary, and to make an organic connection between what is added and what is retained. This effort has been happily seconded by an inherited capacity for taking a calm mental grasp of new political forms and principles. The important result upon procedure has been that, in spite of radical changes in many of its parts, the great tradition in the main has been undisturbed ; the new arrangements and those handed down and retained have been blended into a compact whole.

We have now to consider the separate items in this series of reforms in procedure. In doing so we shall have to trace the political motives as well as the material circumstances which led to their adoption, so far at least as is necessary for the comprehension of the special transaction which we are studying. For we must always bear in mind that reforms in procedure are acts by which Parliament spontaneously binds itself, acts of corporate self-recognition, of appreciation of its own needs on the part of a body consisting of several hundred members. They demand therefore objectively a strong cohesion amongst the members, and subjectively a powerful grasp of the duties of

Parliament as a whole and of the duties thereby implied of each individual towards the state. They express the feeling of responsibility which rests upon a sovereign body—not to be evaded though enforced by no rule or sanction. We may, therefore, make the general assertion that the spontaneous origination and enactment in the heart of a parliament of improvements upon the methods of conducting business are among the most noteworthy phenomena in the life of a modern state. This is certainly the case in England, where the legislative assembly has by slow degrees carried out a many-sided and profound reform in the internal regulation of its work in the full light of publicity, and where the debates in the House and, still more, the minutes and reports of the special committees appointed to consider reforms in procedure, give exhaustive documentary material for understanding and judging the whole process.

In the very first parliament elected on the new suffrage there appeared the first systematic action towards change in procedure. The impetus was given by the abundance of legislative work expected from the new parliament under the influence of the victorious idea of reform. Both Sir Robert Peel, the leader of the Conservative minority, and the Whig-Liberal majority were from the first convinced that if the House was to retain its capacity for work there must be some simplification in its order of business, which had not been essentially changed for the two previous centuries. On one of the first days of the session Lord Althorp, the Liberal leader of the House, gave notice of certain propositions which he intended to bring forward with this object.[1]

At the next sitting the following resolutions were introduced :—

First.—That the House should meet every day, except Saturday, at noon, and sit until 3 p.m., for private business and petitions. That not later than 3 p.m., the Speaker

[1] See *Annual Register*, 1833, pp. 33–35; *Spencer Walpole*, "History of England," vol. iv., p. 341; *May*, "Constitutional History," vol. ii, pp. 69 *sqq.* Sir Robert Peel, having regard to the 300 new members, who were unacquainted with the rules, asked for a short postponement of the changes in procedure.

should adjourn the House till 5 p.m. and leave the Chair without putting any question for adjournment. (Then follow some regulations showing that it was then thought difficult to get together a quorum of forty before the hour fixed for the beginning of public business.) At 5 p.m. the House was to proceed to the business of the day set down in the order book.

This regulation came into force on the 27th of February 1833; the division of the sittings was opposed by Sir Robert Peel and did not become permanent. The great burden of work laid on the House led to a resolution, on the 4th of July, to devote the early sitting to orders of the day on three days in the week.

Secondly.—The Government asked for a reform in procedure as to petitions. At this time petitions had grown to be a real plague to the House, not only because of their bulk, but also because they were made the occasion for unlimited debates on public and private subjects of all kinds. The procedure which had grown up by custom prescribed four regular motions as to each separate petition: (1) that the petition be brought up; (2) that it be received; (3) that it do lie upon the table; and (4) that it be printed: and on each motion debates might take place. Lord Althorp proposed to allow the member presenting a petition to speak on the last two stages only, the introduction and presentation of a petition being allowed to take place as a matter of course without question or discussion.[1]

The proposal as to the time of sitting met with considerable criticism; it was, however, adopted with certain modifications: the new procedure relative to petitions was also accepted.

[1] Brougham had, in 1816, when leading the opposition against the maintenance of the income tax, been very successful in proving how formidable a weapon the presentation of petitions might be in the hands of a single obstructive member. To this must be added the enormous growth in the number of petitions after 1800. In the five years ending 1790 there were 880 petitions, in the five years ending 1805 there were 1,026. The period 1811–1815 produced 4,498, 1828–1832 no less than 23,283. Then in the period 1843–1847 there was the unprecedented number of 81,985. See "Report on the Office of the Speaker" (1853), p. 33. These figures show the flood of petitions that burst upon the last parliament of privilege and the first Liberal middle-class parliament in the days of the Reform movement, the Anti-Corn-Law agitation, and Chartism.

But in two years time this last was given up; instead of devoting to petitions a special sitting "from 12 to 3" the House decided to put limits upon their discussion. As this had no appreciable result the radical expedient of entirely forbidding debates upon petitions was adopted in 1839. In 1842 the prohibition, with the present day directions as to the treatment of petitions, was included in the rules.[1]

As early as the year 1833 a further important deviation from old practice was sanctioned, namely, that committees should have power to meet from 10 to 5 and to sit during the sitting of the House. In the debates on this first reform in the rules the apprehension was several times expressed that it would have little effect in producing quick despatch of business, the chief obstacle to which was the increase of lengthy speaking. One Radical member suggested draconic measures:—that there should be a list of speakers and a time limit of twenty minutes for all speeches, except those of the proposer of a motion, who might speak twice, each time for half an hour; and that no member should be allowed to speak more than ten minutes on the presentation of a petition or more than five minutes on a point of order.[2] Such proposals, of course, received no attention from the House. Not even in the years when utilitarianism bore its most wondrous blossoms in England could the House of Commons summon up sufficient resolution to degrade its procedure to a bare mechanism by regulations such as these. Proposals of a like character have, however, been repeated over and over again.

The reforms next in order are those which have resulted from time to time from the deliberations of the select committees appointed by the House to prepare careful suggestions for improvement; reference has already been made in several places to the importance of the reports presented by these committees as sources of information about the practical working of the rules and the history of their formation. Large and important measures of reform have also

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[1] See Report of select committee on public business (1854), Q. 367, Standing Order of 14th April 1842, amended 5th August 1853, now No. 76.

[2] *Annual Register*, 1833, p. 35.

from time to time been passed without any special previous investigation : the very radical changes effected by Mr. Balfour are instances. But it must not be overlooked that use has frequently been made of the proposals of some of the committees of investigation, years after their formulation, when a reform in one direction or another had become inevitable. Altogether, from 1832 to the present day, there have been fourteen committees appointed to consider the whole or some part of the forms of business.[1] In addition there have been seven committees upon proposals as to the reform of Private Bill procedure : but we have no concern with them. Of the fourteen committees devoted to general reform in the rules only ten are of importance.[2] Their reports have been printed and published. By the help of these reports and of the accompanying detailed examinations of witnesses and opinions of experts we may now trace the course of reform in procedure for the first period, down to 1878.

The select committee of 1837 received instructions "to consider the best means of conducting the public business with improved regularity and despatch." They started from the position which had long been accepted that "by the courtesy of the House" it was understood that on two days of the week (Monday and Friday) the Government should have precedence for their business, but not on other days.[3] They then proceeded to establish that this distribution

[1] Mr. Balfour in his speech of 30th January 1902 gave the number as eighteen. Another (the fifteenth) was appointed in 1906: see Supplementary Chapter.

[2] These are the following.—

1. Mr. Poulett Thompson's committee, 1837.
2. Mr. John Evelyn Denison's committee, 1848.
3. Sir John Pakington's committee, 1854.
4. Sir James Graham's committee, 1861.
5. The joint committee (Lords and Commons), 1869.
6. Mr. Robert Lowe's committee, 1871.
7. Sir Stafford Northcote's committee, 1878
8. Lord Hartington's committee, 1886.
9. Lord Hartington's committee, 1888.
10. Mr. Goschen's committee, 1890.

[3] See for what follows Report (1837), p. iii: "The House at the beginning of every session makes an order that on Mondays, Fridays, and Wednesdays orders of the day shall have precedence of notices; and on Tuesdays and Thursdays notices of orders of the day, &c."

of time, resting not on the rules but on the desire of the House to assist the Government, had been subjected to serious interference by the practice of the House; that, in fact, the orders had, in the then current session, been perverted in one way or another in the proportion of one third of the whole number of days of sitting, and that to the disadvantage of the Government.

The committee found that a large part of the time assigned to Government business had been usurped by discussion of other subjects. Moreover, on no less than fifteen days out of eighty-five the House had been counted out or not formed. To explain the perversion of the orders, which the committee considered to be a novel practice, they pointed to a usage which conformed to the letter but not to the spirit of the rules. Use had been made, for matters of little importance or urgency, of a privilege intended only for serious occasions, namely, that any member of the House might interpose any amendment that he thought fit, upon any occasion whatever.[1] In the view of the committee this constituted a direct interference with the arrangements for giving Government business precedence on certain days. By way of remedy they proposed that upon the question being put that any order of the day be read, except in the case of a Committee of Supply or Ways and Means no amendment should be proposed except that the other orders of the day, or that some particular order, be read. Such a regulation would prevent any formal amendment being moved for the purpose of bringing a new subject into the programme for the day. The committee considered that the question of a Committee of Supply or Ways and Means was one of such frequent occurrence that enough opportunity would be given for bringing forward motions of any character.

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[1] Such was the form in which, from the eighteenth century to that time, it had been usual to bring up grievances against the Government, and also to exercise the function known in modern times as "asking questions." Its applicability to this end depended upon a principle, supported by the usage of centuries, that it was unnecessary for an amendment to be relevant to the matter of the main question. This principle was only abandoned in 1882, since which time the relevancy of amendments has been insisted on. See *May*, "Parliamentary Practice," p. 293, note 1.

The report further stated that the frequent counts out of the House occurred chiefly on "notice days," *i.e.*, days reserved for private members,[1] and that this was accounted for by many of their notices being set down in the order book months in advance, at the beginning of the session. The consequence was that, quite irrespective of many of such notices being of little interest except to a small circle, most of them did not come up for consideration till too late, when, being antiquated and valueless, they failed to draw a House. It was therefore proposed that in future no notice should be allowed to be placed upon the order book for any day beyond the fourth notice day from the date of entry, a limitation to fifteen or sixteen days. The committee further mentioned, without offering any opinion on it, a proposal to omit the first stage of a motion for leave to introduce a bill.

The proposals of the committee found acceptance in the House. That concerning amendments upon reading orders of the day was adopted on the 24th of November 1837:[2] a further improvement was made by an order of the 5th of April 1848 which prevented any amendment being moved for altering the succession of the orders, by providing that thenceforth the Speaker was simply to direct the Clerk to read out the orders of the day as they appeared on the paper, without putting any question.[3] On the 5th of August 1853 these rules were incorporated in the Standing Orders (now No. 13) and at the same time a provision was adopted in the sense of the 1837 committee's proposal for shortening the period of notices of motions (now Standing Order 7). Both rules have lasted down to the present time.

However useful these first reforms may have been, it was soon found that they gave no permanent protection against a state of affairs which every year was felt to be a greater inconvenience in the House: the true cause of the ever-growing delay in the business of the House and of its

[1] "Private members" are all members not in the Government.

[2] Report (1854), Minutes of Evidence, Q. 331. See the remarks of Lord John Russell and Lord Stanley in the debate of 15th June 1840, *Hansard* (54), 1169–1173.

[3] This amendment was adopted on the motion of the Radical leader, Joseph Hume. See Report (1848), p. iv.

fruitless over-exertions lay too deep for cure by any partial reforms in the rules. What protracted the proceedings of the House and prevented progress in legislative work was the change in the character of the House, its members and parties, which quickly followed the year 1832.[1] Sir Spencer Walpole, the best recent historian of this period of English history, gives a striking description of the difference between the old House of Commons before 1832 and its successors.

"The whole character and conduct of Parliament," says Sir S. Walpole, "had been modified by the Reform Act. The reformed House of Commons was largely recruited by a class of persons who had found no place in the unreformed House. The fashionable young gentlemen, who had been nominated as the representatives of rotten boroughs, had been replaced by earnest men chosen by the populous places enfranchised by the Reform Act. Representing not a class, but a people, they brought the House into harmony with the nation. They insisted on receiving a public hearing for their own views; and on obtaining comprehensive information on the many subjects in which they, and those who had sent them to Parliament, were interested.[2] Their determination in these respects produced two results. Parliamentary debates were lengthened to an enormous and, as some people thought, to an inordinate degree; parliamentary papers were multiplied to an extent which probably

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[1] In 1840 Sir G. Sinclair made bitter complaint of the slow and slovenly manner of conducting parliamentary business, which he ascribed to the improper behaviour of many of the members: he stated that, at the beginning of the session especially, much time was thrown away. The speech does not seem to have made much impression on the House. See *Hansard* (54), 963

[2] Sir Erskine May also points to this cause in his pamphlet "Remarks with a view to facilitate the dispatch of public business in Parliament" (1849). The development of freedom, he says, had enormously increased the desire to speak in the House. Delays and even obstructions must not always be regarded as illegitimate parliamentary weapons, as they afforded the means of collecting the opinions of constituencies and the public. For the future, on important legislative proposals, long debates might always be reckoned on. On the other hand, many of the rules and forms of procedure, in spite of being excellent in principle, were in some respects antiquated, and needed to be altered to fit new circumstances. The proposals for reform which May proceeds to make agree in the main with his opinions laid before the various select committees.

no one, who has not had occasion to consult them regularly, has realised."[1] Hand in hand with the extension of the suffrage there went—as has elsewhere been observed—a complete transformation of political parties, a literal revolution in all the machinery and organisation of politics, which was itself a consequence of the great increase in the power of the press. These factors combined in making public opinion into a living force, a result which influenced every institution in the state, and none more than Parliament. It is not possible to do more than touch upon the way in which the emergence of public opinion affected the whole position and function of Parliament without in any way altering its constitution; it must suffice to say that the relation of members of parliament to their constituents was completely changed; their action became more responsible and was now always exercised under supervision. This of necessity led to an ever-increasing use of the forms of parliamentary procedure for the purpose of advancing political aims and material interests of every kind.

In view of the piling up of debates and the lengthening of speeches which resulted from the conditions above described the House of Commons had good reasons for altering its rules of procedure. A no less powerful incentive was pointed out to the 1848 committee by the highest authority on procedure, the then Speaker, Mr. Shaw Lefevre. This was the misuse of the rules. "Mr. Speaker said," reported this committee, "that of late years the state of

[1] *Spencer Walpole*, "History of England," vol. iv, pp. 340, 341. "The multiplication of parliamentary documents may be stated arithmetically. During the eight years which closed in 1832 there were nine sessions of parliament; and the papers printed by the House of Commons are contained in 252 volumes. . . . During the eight years which commenced with 1833 the papers of the House of Commons filled 400 volumes" The yearly average had risen from thirty-one volumes to fifty. Hansard's Debates for 1820–1830 are contained in thirty-four volumes, and for 1830–1841 in fifty-nine volumes "Before the reform of Parliament no House of Commons had ever sat for 1,000 hours in a single session. In 1833 the reformed House of Commons sat for 1,270 hours, in 1837 it sat for 1,134 hours." *Ibid.*, vol. iv., p. 340, n. In the years 1842–1852, neglecting several fluctuations, the time taken up by the work of the House of Commons was shorter than before: during this period it only four times exceeded 1,000 hours, or 121 sittings. See Report on the Office of the Speaker (1853), p xii.

public business had been impeded partly by the greater number of members who now spoke in debate . . . and partly by the virtual abuse and evasion of the rules of the House." The attention of the committee, he considered, should be specially directed to the two forms of motion for adjournment, which were the main interruptions to the course of business; and he suggested that all questions of adjournment of the House and adjournment of debate should be decided without debate. If discussion were forbidden a member would no longer have any inducement to move the adjournment for the purpose of making a speech on some extraneous matter. If members could move the adjournment of the House without notice and upon that question might debate any other question, it was evident that all the regulations adopted for the conduct of the business of the House (and in particular the distinction between order days and notice days) might be rendered quite ineffectual.[1]

The committee further drew attention to the great amount of committee business and the heavy demand it made on the time of members; the progress of debates was interfered with by the thin attendance in the House from 7 to 10, necessary in some degree from the exhaustion caused by the labours of the morning. Leaders of parties and other chief speakers refused in consequence to address the House during those hours, and the debates were therefore spread by adjournments over more nights than they would otherwise have required.[2]

The committee to which Mr. Shaw Lefevre gave this expert advice were appointed by order of the House of Commons in 1848, and their deliberations have been of the

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[1] In a debate on the 15th of June 1840, Lord John Russell defended the distinction in such a way as to show how novel and inconvenient the principle on which it was based was still considered. "It was a useful mode of transacting public business," he said, "and he knew from experience that it was generally acquiesced in by all parties in the House . . . . He was certain it was the most convenient course, because those measures which were then brought forward by the Government were measures which did not belong to this or that administration in office, but were measures which were necessary to promote the business of the country." (*Hansard* (54), 1169 *sqq*)

[2] Report from the select committee on public business (14 August 1848), p. iii.

utmost importance in the history of procedure. Their report, using mainly the language of the Speaker in his examination, describes the situation of the House in telling language: "The business of the House seems to be continually on the increase. The characteristic of the present session has been the number of important subjects under discussion at the same time, and adjourned debates on all of them. This intermingling of debates, adjourned one over the head of the other, has led to confusion, deadening the interest in every subject, and prejudicing the quality of the debates on all. Motions to adjourn the House for the purpose of speaking on matters not relevant to the prescribed business of the day are made more often than formerly; and motions to adjourn the debate have become of late years much more frequent."[1]

The committee adopted in the main the suggestions of the Speaker, and after obtaining, in addition to his opinion, information as to the procedure in the French Chamber and in the House of Representatives of the United States,[2] they proposed the following reforms:—

1. That when leave shall have been given to bring in a bill, the questions of the first reading and printing shall be decided without debate or amendment moved.

2. That when an order of the day shall have been read for the House to resolve itself into a committee of the whole House upon a bill which has already been considered in committee, Mr. Speaker shall forthwith leave the chair, without any question put, unless a member shall have given notice of an instruction to such committee.[3]

The second rule, soon to be known by the name of "Rule of progress," was a permanent and substantial step

[1] Report from the select committee on public business (14 August 1848), p. iii.

[2] There is hardly any other instance in the history of the House of Commons of direct evidence being given by foreign experts. The French rules were explained by no less an authority than the famous historian and statesman Guizot. It seems a little remarkable that of the experts called to testify as to American procedure the report only states, as to one, that he had been for a time member of Congress, and as to the other, that he was a lawyer practising before the federal courts.

[3] The Speaker, Mr. Shaw Lefevre, stated in his examination, that the object of this rule was to prevent debates upon the questions of principle involved in a bill after the second reading had been passed. He goes on to say: "The second reading should be considered the stage of the bill on which the principle ought to be discussed, and that question should never be passed *pro formâ* as it frequently is at present. Nothing is more common than for members to ask the House to agree that the second

in advance. An abuse which had been severely felt lay in the privilege, sanctioned by custom, of allowing fresh debates as to the merits of a bill on each occasion of going into committee for its discussion, although its principle had been debated and accepted upon second reading. With the new rule the only chance of raising such a debate, in the form of an amendment upon the motion to go into committee, was that given by the first appearance of the committee on the paper. The discussion in committee of a large project would often take ten or twenty sittings, and, except on the first of these, there would no longer be the possibility of interposing any motion to prevent the discussion being resumed.

3. That when any committee of the whole House shall have gone through a bill, and made amendments thereto, the chairman of such committee shall report the same forthwith, and that a day be appointed for the further consideration of such report.

4. That on the consideration of a report of a bill, any new clauses proposed to be added be first offered; and the House shall then proceed to consider the bill, and the amendments made by the committee.[1]

5. That with respect to any bill brought to this House from the House of Lords, or returned by the House of Lords to this House, with amendments, whereby any pecuniary penalty, forfeiture or fee shall be authorised, imposed, appropriated, regulated, varied or extinguished, this House will not insist on its ancient and undoubted privileges in the following cases:—

(1) When the object of such pecuniary penalty or forfeiture is to secure the execution of the act, or the punishment or prevention of offences.

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reading shall pass *pro formâ*, and that the bill shall be committed *pro formâ* in order that a great number of amendments may be introduced in the committee, and that the House may debate the principle of the bill upon the question that the Speaker do leave the chair . . . The proposed rule would also prevent any amendment being moved upon the question that the Speaker do leave the chair, when the House is about to resolve itself into a committee on measures relating to trade, religion, or finance. Such an amendment leads to an evasion of the standing orders, and to a debate upon a preliminary stage to this committee, in which subjects of this description ought first to be considered, and at a time when the House is not, technically, in possession of the resolution of the committee. I wish to bring back the practice of the House to the practice of former times, and that all motions relating to finance, all motions relating to trade, or to religion, shall first be considered in a committee of the whole House." Report (1848), Minutes of Evidence, Q. 11.

[1] Both of the above rules were accepted by the House on the 5th of February 1849. Report (1854), Minutes of Evidence, Q. 331.

(2) Where such fees are imposed in respect of benefit taken or service rendered under the act, and in order to the execution of the act, and are not made payable into the Treasury or Exchequer, or in aid of the public revenue, and do not form the ground of public accounting by the parties receiving the same, either in respect of deficit or surplus.

(3) When such bill shall be a private bill for a local or personal act.

The above-mentioned provisions were adopted—the last by resolution of the 24th of July 1849, and all the others in the Session of 1853—and have become permanent parts of the order of business. In the year 1849, too, the procedure as to bills was further shortened by the omission of the formal question and division as to engrossing the bill.[1]

We must add here a series of resolutions upon the rules and alterations in them made by the House of Commons in 1852, without direct reference to the report of the 1848 committee. By an order of the 25th of June a definite assignment of business to the different days of the week was made. Monday, Wednesday, and Thursday were set apart as "order days," Tuesday and Friday as "motion" or "notice" days: the former are days upon which orders of the day—*i.e.*, matters ordered by the House to be placed on the programme for the sitting—are to be disposed of before other motions can be taken up. On Government days the proposals of the Government were to be placed at the head of the list, and orders of the day had to be disposed of in the order in which they stood on the paper. The Wednesday sitting was to begin at noon and to end at 6 p.m. On other days, if the House began to sit before 2 p.m., business was to be suspended from 4 p.m. till 6 p.m. at which time the sitting was to be resumed and the orders of the day to be at once taken up. At the same time a number of resolutions were passed as to select committees.[2]

No less noteworthy than the reform achieved by the committee of 1848 is the fact that a set of further proposals made by the Speaker which tended to limitation of debate were not adopted by the committee and therefore were never properly considered by the House.

[1] See Standing Orders 31, s. 1, 32, 39, 44. Cp. Sir Erskine May's evidence before the committee of 1854, Qq. 196–197.

[2] For a precise statement of these regulations see Standing Orders (1860), pp. 74, 75 (Parliamentary Paper, No. 586).

With the object of getting rid of obstructive motions for adjournment the Speaker proposed that for the future all motions for adjournment, either of the House or of the debate, should be decided without debate. The existing practice forbade amendments to these formal motions: in the Speaker's opinion debate also should be made impossible. To prevent evasion of this rule by a persistent opposition demanding constant divisions, the Speaker suggested at the same time a rule that no division upon a motion for adjournment should be permitted to take place unless twenty-one members should rise in their places and declare themselves with the ayes. The advantage, Mr. Shaw Lefevre said, that would be gained by such a rule was obvious; it would, in fact, only carry out the intentions of the House. "Our rules provide," he explained, "that on certain days, which are called order days, certain orders of the day shall be considered. . . . If members can move the adjournment of the House without any notice of any sort, and upon that question may debate any other question, it is evident that all the regulations that we have adopted for the conduct of our business are rendered quite ineffectual." [1] He further proposed that formal motions for adjournment of this kind should not be repeated during the debate on one question within one hour; but he confined the suggestion to debates in the House, considering that it would be an inconvenient practice in committee of the whole House. A final suggestion as to adjournment was that before resuming an adjourned debate on any subject a motion might be made

[1] From the Speaker's interesting remarks it is clearly to be inferred that these formal motions for adjournment were at that time the regular weapon of obstinate opposition. But their chief effect was to enable members to evade the fundamental rule against speaking more than once upon any motion: motions for adjournment were often made for the sole purpose of giving a member a right to speak on some subject which he wished to raise. See Minutes of Evidence, Q. 57, where the Speaker himself says: "It is constantly the case that the main question is debated upon the question of adjournment, which gives an opportunity to members to speak a second time upon the main question. The committee ought seriously to consider how dangerous the practice is, and that the whole machinery of government may be suspended by any two members who may agree together to move alternately—'That the House do now adjourn,' and 'That some paper be read.' This course would be perfectly legitimate, according to the present rules of the House."

"that this debate shall not be further adjourned," and that if this were carried, the debate should not be prolonged beyond 2 a.m., when the Speaker should put the question. This was the first occasion on which a suggestion of the *closure* for the House of Commons had come from any responsible quarter.

Lastly, the Speaker urged a substantial abridgment of procedure by the abolition of some of the traditional questions which had to be put upon the second reading of bills and upon the report of bills from committee. He explained that no less than eighteen questions had to be put during the passage of a bill, exclusive of questions in committee, and that several of these were of a purely formal nature.[1]

These trenchant innovations did not approve themselves to the committee: the pressure of great political events was needed to persuade the House of Commons to make such a breach in the traditional forms of its course of business as the closure and the other suggestions of the Speaker would have constituted.

The above-mentioned alterations in the rules, carried in the sessions of 1852 and 1853, appear, however, only to have made the necessity for further reform more obvious. As early as the year 1854 we find a new committee of enquiry discussing the rules of business by the instruction of the House, and on this occasion a much more extensive investigation was undertaken.

Mr. (afterwards Sir) Thomas Erskine May, a learned official of the House and the most eminent authority on procedure, was called as a witness as well as the Speaker, Mr. Shaw Lefevre; the kernel of the expert advice offered to the committee is contained in their evidence, particularly in May's detailed explanations and the proposals which he laid before the committee.[2] The shorthand report of the

[1] Minutes of Evidence (1848), Qq. 1–88; as to the eighteen questions, Qq. 18–21.

[2] For what follows see Report from the select committee on public business (1854) and Minutes of Evidence; May's Evidence, pp. 23–44. This is an appropriate place to give some information as to this heaven-sent writer on English parliamentary procedure. Thomas Erskine May was born in 1815, entered the service of the House of Commons at an early age, at first occupied the post of sub-librarian, became Clerk

proceedings and evidence shows clearly that there were two parties in the committee: one of them, the more radical, supported May's far-reaching ideas of reform; the other, more conservative, was not disposed to go so far as he suggested in breaking up the historic construction of the order of business. Although the chairman, Sir John Pakington, belonged to the former group, the majority were only ready for cautious reform. The draft report prepared by the chairman, which was almost entirely based on May's suggestions, was rejected, and a shorter draft drawn up by the well-known Liberal statesman, Sir George Grey, was accepted in its place. While the chairman's report contained literally a new code of rules in thirty-six clauses, that which was finally adopted by the committee had only nine clauses, and the measure of reform was of much more modest dimensions.

The statements of the experts, especially those of May, give an extremely interesting picture of the procedure at that time, and of the difficulties which it placed in the way

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Assistant in 1856, and Clerk in 1871 this office he held almost down to the time of his death in 1886. A few days before his death he was made a peer with the title of Lord Farnborough, a distinction unique among the officials of the House. In 1844 May published the first edition of his masterpiece, "Parliamentary Practice," which has gone through eleven editions, has been translated into most civilised languages, and has earned for its author a world-wide reputation. The later editions of the book have been revised by his successors in office, Sir R. Palgrave and Mr. Milman. In 1854 he published his "Manual," a work intended exclusively for the House; this has since been republished several times with changes in form. In 1849 he wrote a small pamphlet intended for the information of the House, "Remarks and Suggestions with a view to Facilitate the Dispatch of Business in Parliament." From that time onwards he exercised an immense direct influence on the reform of the rules, appearing as the chief expert before the numerous select committees appointed since 1848, and preparing for and assisting their work by untiring compilation of statistics. The deferential respect paid to May's opinion on any matter of procedure for nearly forty years appears frequently in the discussions on subjects of this nature. He was one of those eminent civil servants of the modern type, first produced in England in the nineteenth century, whose great services and far-reaching influence on many provinces of public life are insufficiently appreciated both on the Continent and in England. His work on English Constitutional history from 1760 to 1860, which has passed through several editions, gained for him wide celebrity as a constitutional historian.

of the smooth transaction of business. May started from the position that the existing practice had arisen out of entirely different parliamentary conditions, and did not correspond to modern needs. "When the greater part of these ancient forms were adopted," he said, "the proceedings of the House were very different, in many respects, from what they are at present. Motions were made without notice—there were no printed votes—the bills were not printed—petitions relating to measures of public policy were almost unknown—parliamentary reports and papers were not circulated—strangers were excluded, and debates unpublished. In all these respects the practice has changed so materially that I think a smaller number of forms is now necessary than probably was found consistent with due notice to every one concerned, in former times."[1]

May's proposals, therefore, were mainly directed to saving the limited and precious time of the House by the discontinuance of unnecessary forms, and the abolition of all such methods of conducting business as lent themselves without difficulty to underhand use of an obstructive tendency. Under the first head comes his proposal to repeal a rule dating from the end of the eighteenth century, whereby bills relating to religion or trade could not be introduced without the consideration and sanction of a committee of the whole House.[2] May pointed out that bills of far greater importance than those relating to trade or religion were considered with ample thoroughness, in spite of not having to undergo this preliminary ordeal. The provision had outlived the danger to guard against which it had been devised, namely, that of taking the House by surprise. May further suggested that for the sake of economy in time the introduction of unopposed bills should be allowed to be made at the commencement of the proceedings of the House, at the same time as unopposed returns were moved for. Thirdly, he proposed a change in the method of putting the question on the second and third readings of bills. There were at that time three questions

[1] Report (1854), Minutes of Evidence, Q. 197.

[2] Standing Orders of 9th and 30th April 1772.

to be put at each of these stages, so that there were three opportunities for amendments, debates, and divisions.[1]

He was likewise desirous of the abolition of the formal question "that this bill be committed," and proposed to substitute for it a standing order that every public bill which had been read a second time should stand committed to a committee of the whole House without any question being put, unless the House should otherwise order. With the object of saving time, May further recommended that the practice, adopted since the time of the Revolution, of discussing all public bills in a committee of the whole House should be given up. He suggested that bills should be referred to select committees and discussed by the House itself on the report stage,[2] reserving always a right to the House in any particular case to order and undertake a second revision of the bill. This proposal involved so serious a departure from a practice supported by centuries of use that May himself only described it as an idea of his, not as a formal recommendation. On the same lines was his further proposal that, on two days of the week, the House should sit as a committee on public bills in the morning, these sittings to be separated from the sittings of the House itself, and twenty-five members to constitute a quorum.[3] He also proposed to prevent the delay caused by its being forbidden to a committee, unless by special instruction, to entertain any amendment going beyond the title of the bill, and suggested an appropriate change in the rules; likewise to simplify the procedure as to bringing up new clauses on consideration of report and on third reading.

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[1] The historic formula runs:—"That this bill be now read a second time." This renders it possible to move as an amendment, that the word "now" be replaced by "this day six months." Such an amendment necessitates three questions, with three possible divisions Report (1854), Minutes of Evidence, Qq. 235–250.

[2] May was opposed on principle to committees of the whole House. He says distinctly: "Whenever you can avail yourselves of the services of a select committee, instead of a committee of the whole House, it is an advantage." Report (1854), Minutes of Evidence, Q. 281. The House of Commons has not yet—fifty years later—been converted to his views on this subject, though some concessions to them have been made. But see Supplementary Chapter.

[3] Report (1854), Minutes of Evidence, Qq. 270, 271, 288.

With reference to the daily course of business the resourceful Clerk of the House suggested the dispensing with all the formal and, in his judgment, superfluous questions and divisions upon the formation and conclusion of a committee of the whole House[1]: such questions only served to delay business and to give opportunities for crowding out the subjects set down, and for introducing extraneous subjects, brought forward by members for reasons of political strategy, or for the sake of material interests which they might have at heart. The Speaker should leave the chair without putting any question to the House as soon as the order of the day for the committee was reached. Above all, he suggested an extension of the rule, adopted by the House in 1848, according to which formal amendments upon the question of taking up a particular order of the day were abolished; he proposed to apply, partially at least, to the excepted case of the Committee of Supply the same rules as were applicable to other committees of the whole House, and to provide that when progress had been reported upon certain classes of the estimates, the Speaker should leave the chair without question when these classes of estimates came up again. The object of such formal amendments (which had no need to be relevant to the order of the day, the taking up of which was before the House) was to put questions to the Government, and to elicit debates thereon quite foreign to any subject on the day's programme. Through the gap which had been left by this exception a practice had crept in, of interposing all kinds of questions and initiating irregular debates, of which private members, especially those on the side of the Opposition, often made use in a manner very detrimental to the progress of business. "The practice has been carried to an inconvenient extent," said the Speaker, "especially of late, when members have not been contented with merely moving amendments on going into Committee of Supply, but have given previous notice of their intention to call the attention of the House to questions before the Speaker leaves the chair, which has caused very great delay

[1] He referred specially to the formal motions, that the Speaker do leave the chair; that the House do receive the report of the committee, &c. See Report (1854), Minutes of Evidence, Qq. 332–340.

and inconvenience. Many topics may thus be debated by the House at the very same time, without its being able to give an opinion on them. Some of those subjects may refer to the conduct of the Government, and require a member of the Government to take part in the debate; but as no member of the Government can speak more than once upon the same question, and as all these subjects are brought forward upon one question, it frequently happens that the House is obliged to listen to *ex parte* statements which cannot be answered." [1]

The historical origin of the practice is the best explanation of the importance attached to it. As we have seen, the old order of business made no such distinction as was in 1854 (and is now) current between sittings when orders of the day had precedence and sittings when notices of motion had precedence. The distinction, and the reservation of special days for Government orders, which depended upon it, was first made in the year 1811. One of its most important consequences was the diminution of the privilege of free initiative possessed by members, of their chance of criticising the situation of public affairs and the proceedings of the Government, and of their right to make enquiries and bring forward grievances: these were all restricted by the discussions on Government days being strictly confined to matters brought forward by ministers. But it was not long before the parliamentary readiness of English members found a way out of the difficulty. On the 6th of March 1811, the day after the introduction of order days, the first case occurred of an amendment moved by a private member upon the motion to go into Committee of Supply.[2] Until the year 1837 this expedient for gaining a hearing on Government days was little used. But from that time it grew in favour. By 1850 it had become customary to give notice of such amendments, and to make them known by

[1] Report (1854), Minutes of Evidence, Q. 508.

[2] It is instructive to notice that the Speaker of the day at once raised an objection, though he ruled the amendment to be in order. See as to the whole of this development, May's interesting account in the report of the 1871 committee, Q. 10.

means of the printed notice paper.[1] May stated to the committee of 1854, that in the previous session there had been twenty-two nights on which motions and amendments had been proposed on going into Committee of Supply or Ways and Means; that from two to twelve notices of motion had been set down on nearly every supply night during the session, and that the whole course of business as appointed by the House had been consequently disarranged. The important duty of thoroughly considering the estimates was, in particular, seriously impeded.[2] This practice had largely frustrated the main object of the changes in rules made since the beginning of the nineteenth century, namely, the securing of a certain proportion of parliamentary time for Government business. May gave the reason why protection of orders of the day against such motions had not been given to the exceptional case of orders for taking up supply, namely, that it was desired to maintain intact the old constitutional maxim that the discussion of grievances should always precede the consideration of supply.[3] Even now, therefore, he only suggested a limitation, not an abolition, of the right to move amendments on such orders.[4] With reference to select committees May suggested that their composition should for the future be altogether entrusted to the Committee of Selection, and that the number of members to serve on them should be reduced from

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[1] Report (1861), Minutes of Evidence, Q. 348.

[2] Report (1854), Minutes of Evidence, Q. 340. See further Report (1871), Qq. 88–96.

[3] As to the rise and meaning of this fundamental principle of the English Constitution see *Stubbs*, "Constitutional History," vol. ii., p. 601; *Taylor*, "Origin and Growth of the English Constitution," vol. i., p. 495; also *Rot. Parl*, vol. ii, pp. 149, 273.

[4] May wished to divide the estimates into six classes, and to allow preliminary motions at the beginning of each class. His proposal was, it is true, considered open to objection by the Speaker, Mr. Shaw Lefevre, "My fear is that if this rule were adopted without further regulations those questions would accumulate. Many days, perhaps weeks, might elapse before the House would arrive at the end of these questions, during which time there would be no Committee of Supply. I should prefer restricting the privilege of members to raise questions upon going into supply to one question, which should be an amendment upon the question, 'That the Speaker leave the chair.'" Report (1854), Minutes of Evidence, Q. 512.

fifteen to eleven. Finally he wished to expedite the course of business by giving the House of Lords a wider scope in the initiation of bills; what was needed was some relaxation in the insistence on the part of the Commons on their ancient constitutional privilege to have all bills involving pecuniary burdens brought before them in the first instance. He mentioned a practice, recently adopted, by which a more equal division of work between the two Houses had been rendered possible without any formal infringement of the privileges of the Commons.[1]

The Speaker, in his examination, expressed his concurrence in most of May's suggestions, and especially approved of the proposal to restore the custom of referring bills to select committees in place of always sending them to committees of the whole House. He repeated also the request, which he had made in 1848, for the introduction of the closure and stated his conviction that it was an expedient to which the House would some day or other be obliged to resort. Further he proposed, for the sake of saving time and trouble, the adoption of written messages from one House to the other, in preference to the antiquated expedient of a conference between them.[2]

With these proposals before them the committee submitted a report far from radical in its suggested alterations; while expressly acknowledging the improvement effected in 1848, they declared themselves convinced of the necessity for new regulations. Above all they referred to the practice of raising various subjects of debate before the Speaker left the chair on the House going into Committee of Supply, and recognised the justification for the efforts made to prevent what had become an abuse of the forms of the House.

[1] The practice consisted in the House of Lords originating bills containing provisions militating against the privileges of the House of Commons and striking them out on the third reading. When the bill was printed by the House of Commons these provisions were all inserted in italics, with a note, that it was proposed to add these clauses by amendment in committee; then the House of Commons made the provisions which the Lords had already agreed to, but had struck out, in deference to the Commons' privilege, on the third reading. See Report (1854), Minutes of Evidence, Q. 394; also *Denison*, "Notes from my Journal," p. 63.

[2] Report (1854), Minutes of Evidence, Qq. 404–595.

But they confessed themselves unable to devise any new rule against it.[1]

With one exception, all the positive proposals finally recommended by the report were incorporated in the standing orders by resolution of the House on the 19th of July 1854. Their text is as follows:—

1. That it be an instruction to all committees of the whole House to which bills may be committed, that they have power to make such amendments therein as they shall think fit, provided they be relevant to the subject matter of the bill; but that if such amendments shall not be within the title of the bill, they do amend the title accordingly, and do report the same specially to the House.[2]

2. That the questions for reading a bill a first and second time in a committee of the whole House be discontinued.[3]

3. That in going through a bill, no questions shall be put for filling up words already printed in italics, and commonly called blanks, unless exception be taken thereto; and if no alterations have been made in the words so printed in italics, the bill shall be reported without amendments, unless other amendments have been made thereto.[4]

4. That on a clause being offered, on the consideration of report or third reading of a bill, the Speaker do desire the member to bring up the same, whereupon it shall be read a first time without question put.[5]

5. That Lords' amendments to public bills shall be appointed to be considered at a future day, unless the House in any case shall order them to be considered forthwith.[6]

6. That every report from a committee of the whole House be brought up without any question being put.[7]

7. That bills which may be fixed for consideration in committee on the same day, whether in progress or otherwise, may be referred together to a committee of the whole House, which may consider on the same day all the bills so referred to it, without the chairman leaving the chair on each separate bill, provided that with respect to any bill not in progress, if any member shall raise any objection to its consideration, such bill shall be postponed.[8]

8. That the House, at its rising on Friday, do stand adjourned until the following Monday, unless the House shall have otherwise ordered.[9]

The remaining proposal of the committee, namely, to alter the Standing Order of the 25th of June 1852 relating

[1] See Report (1854), p. v. The reason for their failure is stated by the committee as follows:—"They have found a difficulty in devising any new rule which, while it would check what they cannot but regard as an abuse of the right now possessed by members, would not at the same time deprive them of what has hitherto been considered a legitimate opportunity of bringing under the notice of the House any case of urgent and serious grievance.

[2] Standing Order 34.
[3] Standing Order 36.
[4] Standing Order 37.
[5] Standing Order 38.
[6] Standing Order 43.
[7] Standing Order 53.
[8] Standing Order 33.
[9] Standing Order 24.

to Committees of Supply and Ways and Means so as to allow such committees to be fixed for any order day, was not adopted until the 3rd of May 1861.

On the 21st of July 1856, without previous investigation on the part of a committee, the House incorporated the following further provisions among its rules :—

1. That no amendments not being merely verbal shall be made to any bill on the third reading.[1]

2. That on Wednesdays and other morning sittings of the House all committees shall have leave to sit, except while the House is at prayers, during the sitting, and notwithstanding any adjournment of the House.[2]

3. That this House will not receive any petition, or proceed upon any motion for a charge upon the revenues of India but what is recommended by the Crown.[3]

The inclination towards reform of the rules remained, however, as decided as ever. The principal mischiefs which had been complained of in the earlier committees of investigation had been to a certain extent remedied. There was less prolonging of debates by numerous and long speeches, causing adjournments of discussions and consequent confusion in the programme of work laid before the House. But still the delay in parliamentary business was unmistakable. In the opinion of Mr. Shaw Lefevre's successor in the Speakership, Mr. Denison, a man with great knowledge on the subject of procedure, the chief source of delay was to be found in the frequent preliminary motions upon all kinds of subjects which were allowed to be brought up as amendments to the motion for going into Committee of Supply or Ways and Means. In consequence of the rejection of the proposals made by Sir Erskine May and Mr. Shaw Lefevre to the committee of 1854, this inconvenience had been retained; indeed it had become aggravated. Thus it once more came prominently before the new committee of enquiry appointed in 1861, which contained a number of the most eminent members of the House of Commons and political leaders, such as Lord Palmerston, Mr. Disraeli, Mr. John Bright, Lord Stanley, and Sir George Cornewall Lewis. Sir Erskine May was called again as a witness, also the Speaker,

[1] Standing Order 42. [2] Standing Order 54.

[3] Standing Order 70 As to the meaning of the third resolution see the comments *infra* in the chapter on financial procedure.

Mr. Denison, and the experienced Chairman of Committees, Mr. Massey. The committee in their detailed report[1] laid emphasis on the fact that the House and its previous committees on the same subject had proceeded with the utmost caution. "They have treated with respect the written and the unwritten law of Parliament, which for ages has secured a good system of legislation, perfect freedom of debate, and a due regard for the rights of minorities. This respect for tradition and this caution in making changes have proceeded on the principle that no change is justifiable which experience has not proved to be necessary, and that the maintenance of the old rules is preferable to new but speculative amendments." The committee remarked with satisfaction that the new rules introduced so far had, without exception, taken firm root and that none had yet been altered or rescinded. The report lays down as the chief end of all reform the establishment of certainty, day by day, as to the business to be transacted; that for despatch, for the convenience of members, and for decorum of proceedings, certainty is to be regarded as the primary object; that the ideal working of the parliamentary machinery would not only provide for the House and each member knowing at the beginning of each sitting what was to take place in each subdivision of the sitting, but would also enable them to rely upon the carrying out of the programme laid down. Starting from this point the committee took up above all the problem which had been attacked in previous enquiries, namely, how to deal with the disturbance of the day's programme for Government sittings arising from amendments moved by private members upon a motion for going into Committee of Supply or of Ways and Means. This question, which had at that time become the real centre of the problem of procedure, occupied the greater part of the evidence of the Speaker. He showed clearly how these motions, brought forward sometimes on party grounds, and sometimes to serve real national ends, brought the whole arrangement of the House into confusion. "Besides the delay," said Mr. Denison, "which is occasioned by these proceedings, there is great uncertainty in every step

[1] Report from the select committee on the business of the House (1861), pp. iii–xii.

in public business. The great complaint of members is that they never know what business is coming on, and this uncertainty is, I think, the great evil at present to be corrected."[1] The chief remedy which Mr. Denison proposed was the extension of the "rule of progress," which had long applied to the discussion of bills in committee, to the proceedings of Committee of Supply. He suggested that each great head of the estimates (Army, Navy, Revenue Departments, Civil Service), when once brought under discussion, might be proceeded with consecutively; that upon the proposal for the first time to go into committee upon each of these heads motions might be brought forward, but not upon a proposal to go into committee to resume the discussion. There would be, in addition to these four, the other occasions upon which the House went into Committee of Supply upon some other head: at such times debates could be brought on, grievances could be discussed, suggestions made, or information demanded. Mr. Denison did not consider further steps, much less a complete prohibition of such interruptions of the day's programme, to be called for. It would be too serious an inroad on the right, as important as it was ancient, of bringing up grievances before granting supply; and it would be courting failure, he thought, if an attempt were made to devise too stringent limitations on the liberty of members. A large portion of the House would object to them, and this would make their enforcement practically impossible.[2]

The committee, however, could not yet make up their minds to attack the problem so radically. "It cannot be denied," runs the report,[3] "that these multiplied preliminary motions are a serious obstacle to certainty in the proceedings of the House, and are a cause of much delay. On the other hand, it must be remembered that the statement and consideration of grievances before supply are among the most ancient and important privileges of the Commons, and this opportunity of obtaining full explanation from the Ministers of the Crown is the surest and the best. Before going into a Committee

[1] Report (1861), Minutes of Evidence, Q. 27.
[2] *Ibid.* Qq. 27–82.
[3] Report (1861), p. iv.

of Supply the Ministers have an interest both in making a House and in keeping a House. The debate proceeds, with the Speaker in the chair, with an appropriate motion under discussion, and the strictest rules of debate are necessarily observed." The committee also pointed out that the proposed application of the rule of progress to Committee of Supply might produce serious inconvenience, as it would create an additional obstacle to the Speaker leaving the chair for the first time on going into any class of estimates, and thereby would delay votes in supply which might be of great importance to the public service. They therefore adhered to the decision of the committee of 1854, and did not think it expedient to recommend a departure from established usage in this particular. The report dealt, under the same head of greater certainty, with a further proposal which had been before the committee of 1854, and which had reference to the motion ordinarily made on Fridays—"That the House at its rising do adjourn to Monday next": the practice had grown up of allowing upon this motion irregular questions to be put to ministers and of permitting members to discuss any question they wished to bring forward; consequently a large part of the Friday sitting was lost for regular business: Sir Erskine May showed that on the average four hours were consumed every week. The Speaker, though with great caution, expressed himself in favour of a change.[1] He wished that these irregular questions and speeches should be confined by fixed limits of time, that the motion for adjournment to Monday should never be postponed beyond 7 o'clock. The Chairman of Committees, Mr. Massey, on the other hand, declared himself opposed to the Speaker's plan, which he considered a serious infringement upon the liberty of members. The usage had arisen out of the desire of members to introduce their questions to ministers by expository

[1] Report (1861), Minutes of Evidence, Qq. 83–137, 310–328. The parliamentary requirement, since settled in the form of "Questions," was met by these enquiries which brought on irregular debates, as well as by the formal motions upon going into Committee of Supply or Ways and Means. No doubt as soon as the House adopted the modern form of allowing the interrogation of the Government all these old forms were bound to disappear.

statements, a practice forbidden at the ordinary question time before the beginning of public business.[1]

The committee finally took a middle course; they suggested the adoption of a standing order whereby the House at its rising on Friday would, without motion made, stand adjourned till Monday; but only on condition that Friday should be a Government order day throughout the session, and that the motion for a Committee of Supply or of Ways and Means should always stand first among the Government orders on that day. Desultory debates would then be raised in the same way as on other occasions of going into Committee of Supply. Liberty would be left to members on Fridays for so long as Committee of Supply was open, which was the case during the greater part of the session.

Mr. Denison also discussed in detail the question, which had often been raised before, whether it might not be advisable to substitute select committees for committees of the whole House in the case of public bills. He gave his warmest support to such a scheme on the ground of economy of time. At all events some bills should be considered by select committees and the House might decide whether it would be necessary to send the bills to a committee of the whole House, or whether there was sufficient opportunity for discussing them on report. Certain clauses involving matters of great interest might, he suggested, be re-committed to a committee of the whole House. He specially recommended this procedure in the case of consolidation acts, which contain but a small number of alterations in law. Mr. Denison made a strong point by referring to the analogy of private bills; these, in matters of immense importance to trade and public welfare (in the case, for instance, of railway bills) had long been delegated to committees of five, and by them satisfactorily and finally dealt with.[2]

Unlike their predecessors, the committee took up this plan of reform. The report found the proposal of the Speaker worthy of most careful consideration; it stated the

[1] Report (1861), Minutes of Evidence, Q. 427.

[2] *Ibid.*, Qq. 155–226.

presumption hitherto to have been that the examination of a bill before a select committee was insufficient, and that the Speaker's proposal would cause this presumption to be exactly inverted: there would always be an opportunity of rebutting it on a motion to re-commit the bill to a committee of the whole House.[1]

It is very interesting to observe the treatment by the committee of the question which was more and more forcing itself to the front—that of the position of Government proposals in the succession of business. This special position was given by allowing on certain days priority to Government proposals over all other subjects of discussion, and by declaring once for all, by standing order, that Committees of Supply and Ways and Means could always be put down for any Government day. The assignment of certain sittings to Government proposals had, as before noted, without any definite decision, been a custom of the House in the early years of the nineteenth century, when it was regarded as a concession to the Government. It was not till 1846 that a distinct order fixed Mondays and Thursdays as Government days. By a standing order of the 25th of June 1852 Committees of Supply and Ways and Means were fixed for these days and also for Wednesdays. Usually a third day was conceded towards the middle of the session. But these arrangements soon proved insufficient for the needs of the Government. "It must be remembered," said the committee's report, "how large a proportion of the public business transacted is now devolved on the ministers of the Crown. All questions of supply and ways and means are exclusively in their hands; and for the express purpose of bringing large branches of the public expenditure more closely under the annual review of the House of Commons, numerous charges have been recently removed from the Consolidated Fund, and have been placed on the estimates. . . . These salutary changes have added greatly to the labours of the Committee of Supply, and make a large deduction from the time available for Government bills. . . . Your committee have therefore agreed to recommend,

[1] Report (1861), pp. viii, ix.

first, that the Committees of Supply and Ways and Means may be fixed for any day on which the House shall meet for despatch of public business; second, that on (a third day) orders of the day shall have precedence of notices of motions, the right being reserved to Her Majesty's ministers of placing Government orders at the head of the list." [1]

Two things are apparent from the concluding passages of the report—first, the conservative character which distinguishes the proposals of the committee; secondly, the great political wisdom and experience which characterises the eminent parliamentarians, who composed it, as heirs and transmitters of a high tradition. We read: "Your committee, like preceding committees on the same subject, have passed in review many suggested alterations, but like them have come to the conclusion that the old rules and orders, when carefully considered and narrowly investigated, are found to be the safeguard of freedom of debate, and a *sure defence against the oppression of overpowering majorities.* Extreme caution, therefore, in recommending or introducing changes is dictated by prudence. These rules and orders are the fruit of long experience; a day may break down the prescription of centuries. It is easy to destroy; it is difficult to reconstruct. But if changes be thus dangerous, and if the excellence of the existing rules be thus constantly recognised, it is the first duty of the House to maintain those rules inviolate, and to resist every attempt to encroach on them. The Speaker is their appointed guardian; he is entitled to the unanimous support of the House in his

[1] Report (1861), p. vi, §§ 25–30. It may be seen from the apologetic words by which the proposal is prefaced how distinctly the committee felt the importance of the innovation, in spite of their appreciation of the necessity for giving to the Government a more generous share of parliamentary time. The report reads: "Although it is expedient to preserve for individual members ample opportunity for the introduction and passing of legislative measures, yet it is the primary duty of the advisers of the Crown to lay before Parliament such changes in the law as in their judgment are necessary; and while they possess the confidence of the House of Commons, and remain responsible for good government and for the safety of the state, it would seem reasonable that a preference should be yielded to them, not only in the introduction of their bills, but in the opportunities for pressing them on the consideration of the House."

efforts to enforce them. *Common consent is the best security for their maintenance.* Order is their sole object; and without order, freedom of debate and prompt despatch of business cannot long exist."[1]

The committee adopted the four following recommendations:—

1. That the Committees of Supply and Ways and Means may be fixed for every day upon which the House shall meet for the despatch of public business.[2]

2. That on Friday, throughout the session, orders of the day shall have precedence of notices of motions, the right being reserved to Her Majesty's ministers of placing Government orders at the head of the list.

3. That by standing order the House at its rising on Friday do stand adjourned to the following Monday without question put, unless the House should otherwise resolve; provided that while the Committees of Supply and Ways and Means are open the first order of the day on Friday shall be either supply or ways and means, and that on that order being read, the motion shall be made "That the Speaker do leave the chair."[3]

4. That when a public bill has been committed to a select committee and reported to the House, the bill as amended shall be appointed for consideration on a future day; when, unless the House shall order the bill generally, or specially in respect of any particular clause or clauses thereof, to be re-committed to a committee of the whole House, the bill, after the consideration of the report, may be ordered to be read a third time.

The last cited proposal of the committee was, however, in spite of strong support, rejected by the House. The others were, by resolution of the 3rd of May 1861, placed among the standing orders.

An interval of exactly ten years passed before another special committee of the House of Commons were entrusted with an enquiry as to the state of the rules.[4] Shortly

[1] Report (1861), p. xi, § 57. (The italics are the author's.)

[2] Now Standing Order 16.

[3] Now Standing Order 24; the second section (formerly Standing Order 11) is now abrogated by reason of the changed arrangement of sittings.

[4] During this interval the House, on the 26th of March 1866, resolved upon a more definite formulation of the old regulations of 1713, as to motions involving a charge on the public revenue; see *infra* in Book II., the chapter on financial procedure. In 1870, on the motion of Mr. Gladstone, a small improvement in the rules, the adoption of Standing Order 54, was effected, this provided that in future the House should set up the Committees of Supply and Ways and Means at the beginning of each session immediately after voting the address in reply to the speech from the throne. And, finally, in the session 1867–8 a change in the times of sitting was made by simple resolution of the House. From 1834 down

before this, in 1869, the House of Commons consented to form a joint committee with the House of Lords to collect material and draw up suggestions for reforms in procedure especially as to the relations between the two Houses. The expert evidence was confined to an examination of Sir Erskine May, who again brought forward many details of historical interest and practical observations.[1] His most important proposal had relation to private bill procedure. He drew attention to the enormous cost caused by the double discussion of private bills in two separate committees of Lords and Commons and advocated a simplification of the procedure, suggesting the appointment of a joint committee of selection, which should distribute private bill legislation amongst select committees composed of members of both Houses. This radical measure was, however, confronted by many technical difficulties, and even more serious objections were raised on both sides, by the Commons on the score of their jealous maintenance of their historic privileges and by the Lords on the score of their consciousness of rank and constitutional rights. This excellent scheme of reform remains unrealised to this day, to the unquestionable detriment of the promoters of private bills, ratepayers, capitalists or others, who have still to discharge, with such patience as they can command, the double cost of private bill procedure and parliamentary advocacy.

The proposals, enumerated in seventeen sections, which the joint committee made, form the positive result of their labours. A second and no less important question was discussed, and decided in the negative. This was the advisability of resuming in a subsequent session, proceedings on bills uncompleted in the previous session at the point to which they had then been carried. A bill had been intro-

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to this time it had been customary to hold one or two "morning" sittings each week, beginning at 12 and lasting till 4; at this time a two hours' adjournment was taken till the main sitting began at 6. From 1867–8 instead of this arrangement 2 o'clock was fixed as the beginning of a morning sitting and the adjournment was taken from 7 till 9. See Report (1871), Minutes of Evidence, Q. 274 (Sir Erskine May).

[1] Report from the joint committee of the House of Lords and the House of Commons on the despatch of business in Parliament (1869); No. 386.

duced into the House of Lords by the Marquis of Salisbury with this object in view, and suggestions had been made for new standing orders which would have had the same effect. The committee pronounced the scheme worthy of attention, but declined to accept it, giving as their reasons that the House of Commons, in 1848, had rejected a similar suggestion in the form of a bill sent down by the Lords, and that a repetition of the suggestion would probably share the same fate.

It appears strange that Sir Erskine May, who probably knew the practice of Parliament better than any other man of his century, at the end of his evidence made the remark that so many committees on the subject had sat during the last twenty years that the subject of improved procedure was very nearly exhausted. "Almost every conceivable improvement has been adopted, and there is scarcely any field for further suggestions." And yet but two years later (1871) he had to appear before another select committee of the House of Commons occupied with proposals for improvement of the rules of business.

Sir Erskine May and the Speaker, Mr. Denison, were again the two pillars of the committee.[1] A substantial proportion of the suggestions and proposals made by the former were, on this occasion also, approved by the committee, incorporated in the report and in part adopted by the House. Other no less important plans of reform brought forward by him, which failed to pass at the time, were, under the pressure of circumstances, carried into effect a few years later.

The most important of Sir Erskine May's suggestions were the following:—(1) He desired to see a rule laid down by which an end would be put to the daily deliberations of the House at a fixed hour, the object being to prevent exhausting extensions of discussion into the morning hours, such as had recently become frequent.[2] At all events after

[1] Report from the select committee on the business of the House, 28th March 1871. (No. 137.) The committee included many eminent members of the House, among others Mr. Disraeli, Mr. Robert Lowe, and Sir George Grey. The chair was occupied by Mr. Robert Lowe, then Chancellor of the Exchequer.

[2] A proposal to this effect had been made in the House by Mr. Gilpin in 1870, but no conclusion was arrived at.

a certain hour no opposed business ought to be allowed to come on. (2) He called attention to the great and increasing expenditure of time upon the proceedings of committees of the whole House and reverted to his old suggestion that the House should again hand over a part of its legislative functions to definite organs of the House, to committees properly so called. On this occasion, however, he varied his former scheme by proposing a new kind of committee, a real "grand committee." The House would divide itself into six such committees of 110 members each, taking up distinct branches of legislation. He even contemplated the re-establishment of the old legal position that all who came to a committee might have a voice in it.[1] A reference back to the House from such committees ought only to happen occasionally. For very often, he said, a bill was made worse in committee of the whole House, amendments which afterwards turned out to be inconsistent with other parts of the same measure being frequently accepted merely for the sake of making progress. (3) He recommended the abolition of the perfectly antiquated rule entitling any one member to have all strangers (*i.e.*, visitors) removed from the galleries of the House. In its place he proposed that the exclusion of the public should be brought up by the proposal of a motion, not open to discussion, and to be put to the House at once. (4) On the further question of the interruption of business by formal motions for adjournment on the part of the Opposition, Sir Erskine May expressed himself very cautiously. He considered that the only protection was a kind of closure; and he spoke very emphatically against any actual introduction of this institution.[2] It is a testimony to the dignified and peaceful character of the discussions of those days that Sir Erskine May could describe the expression of impatience on the part of the House as a moral closure which generally was effective. (5) Referring to the waste of time caused by demands for repeated divisions —a practice which was most troublesome when put in force by a small number of members engaged in obstructive

[1] Report (1871), Minutes of Evidence, Qq. 190, 254.

[2] *Ibid.*, Minutes of Evidence, Qq. 53, 211–216.

tactics[1]—he recommended, as an amendment directed against unfair use of this right, that twenty-one should be the least number of members entitled to demand a formal division. (6) Another obvious question which was raised was whether an arrangement of the session other than that which kept members in London till the middle of August might not accelerate the business of Parliament. May did not think so ; he considered it necessary to leave the autumn and the beginning of winter free for the preparation of Government measures. (7) He was also examined with reference to the vexed question of how to repress the disturbance to the financial arrangements and to all business caused by the preliminary amendments upon going into Committee of Supply. He gave an eloquent description of the lamentable inconveniences caused by a great part of the time set aside for supply being taken up by discussions on formal amendments and questions raised by members in this manner.[2] No doubt the phenomenon had also its gratifying side ; it was an expression of the increased part taken by members in the whole of public affairs, and was one of the effects of the two Reform Bills, which had had a material influence on the character of the House. "Every single circumstance," said May, " points to the fact that the House of Commons is altogether more active and vigilant than it formerly was, and takes part in examining and discussing every imaginable question, not only with regard to the estimates, but every bill and subject of discussion."[3]

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[1] The smaller the minority the more time a division takes, as the counting of practically the whole House has to be performed in the one lobby. See Report (1871), Minutes of Evidence, Qq. 63–67.

[2] He pointed out that for the last ten years the average number of amendments moved on going into Committee of Supply had been thirty-three *per annum*, in addition to about an equal number of questions and discussions not ending in amendments (Minutes of Evidence, Q. 10). The committee of 1861 already had said, " Before Easter, the two Government order nights in each week are principally occupied by debates before going into Committee of Supply on the Navy and Army estimates and by the consideration of the leading details of these two estimates in committee. The obvious effect of this delay is to retard legislation and to postpone the consideration of the Government bills till after Easter." (p. vii.)

[3] Report (1871), Minutes of Evidence, Q. 95.

On the last problem, the Speaker, Mr. Denison, expressed himself very decidedly. He pointed out that the use made by individual members of the principle that grievances ought to precede supply was no longer in consonance with the constitutional conditions of the day, inasmuch as now the Government were the servants of Parliament. It was no longer the Crown but the House itself that desired to have the estimates considered, and whose wishes were thwarted by preliminary motions brought forward on the proposal to go into Committee of Supply. He therefore wished to see the power of interruption abolished for at least one day in each week, by the adoption of a rule enabling the House at once to go into Committee of Supply without motions preceding it. Mr. Denison also expressed himself as opposed to the introduction of the closure.[1]

The resolutions which the committee reported to the House as suggestions for reform only dealt with a few points. They were as follows :—

1. That whenever notice has been given that estimates will be moved in Committee of Supply, and the committee stands as the first order of the day, upon any day, except Thursday and Friday, on which Government orders have precedence, the Speaker shall, when the order for the committee has been read, forthwith leave the chair, without putting any question, and the House shall forthwith resolve itself into such committee. (This may be shortly described as the extension to Committee of Supply of the rule of progress which had long been adopted for committees of the whole House upon bills.)

2. That no fresh opposed business be proceeded with after 12.30 A.M. (This is the "Eleven o'clock rule" of the present procedure.)[2]

3. That strangers shall not be directed to withdraw during any debate, except upon a question put and agreed to, without amendment or debate.[3]

There were certain other resolutions, including a suggestion of a permissive abrogation of the need for leave to

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[1] Report (1871), Minutes of Evidence, Qq. 295-298, 310.

[2] Adopted as a sessional order on 4th March 1873, this became a permanent part of parliamentary law by usage, and since 24th February 1888 it has been one of the standing orders. The object of the provision was to ensure, as far as possible, a shorter duration of the sittings, the length of which was becoming a menace to the health of members. The Speaker informed the committee of 1878 that this end had not been attained: the arrangement was a convenience to members at the expense of bills brought in by private members, which it practically shut out. See Report (1878), Minutes of Evidence, Qq. 300-311, 783-785, 790-793.

[3] Now Standing Order 91.

bring in a bill; but they were not, at the time, acceptable to the House. Nor was the third of the above-named reforms adopted as a standing order till much later, on the 7th of March 1888. The only step in advance which was an immediate result of the committee of 1871 was the acceptance, with certain modifications, of the important principle laid down in the first resolution. We have seen that in spite of the recommendations of the committees of 1848, 1854 and 1861 it had not hitherto been possible to induce the House to accept it. Beyond all question it was a serious limitation of the scope of private members' rights in favour of the Government and the daily programme framed by them. That the House was at last willing to accept such a diminution of its own privileges as against the Government is as much a proof of the urgent need of the reform as of the energy of the Gladstone Ministry in extorting from its own party such a concession to the parliamentary power of the Cabinet. The comprehensive and successful reforming legislation of the first Gladstone administration doubtless made some measure of the kind absolutely necessary, and may well have contributed to justify such a sacrifice of parliamentary initiative. Accordingly the House resolved, on the 26th of February 1872, that the rule of progress should be extended to Committee of Supply; that is to say, that amendments on the occasion of going into such committee should only be allowed on a day when a new division of the estimates was being taken, not at subsequent sittings.[1] The sessional order actually adopted went even further, as it imposed a material limitation upon the residue of debates which were independent of the Government's programme. It was provided that amendments on these permitted occasions could only be moved when they were relevant to the division of the

[1] See Report (1878), Minutes of Evidence, Qq. 1–8, 367–369, 397–405, 544–554. The right of delaying Committee of Supply on the introduction of supplementary estimates was not affected, nor was the right to move amendments on going into Committee of Ways and Means or upon the report of supply. In the last-mentioned case amendments had for years been confined to matters relevant to the resolutions reported. See Report (1878), Minutes of Evidence, Qq. 25, 552 *sqq.*

estimates which was down for discussion.[1] Such severity was too great to be maintained; it was once repeated, namely, in the session of 1873; but with the fall of the Liberal Government this innovation fell too. The House of Commons which was elected in 1874, and which contained a Conservative majority under Mr. Disraeli's leadership, abstained from renewing the restriction. But even the Conservative Government could not refrain from a partial limitation on the freedom of members to interrupt the course of business. In 1876 the order was once more tried, with, however, an essential difference. Relevancy to the division of the estimates was still required, but the real principle, the rule of progress, was abandoned; subject to the restriction as to subject matter, amendments might be brought forward on any passage into supply, not only on the first occasion of taking up one of the great divisions. In this form the provision was almost meaningless, and in 1877 it was not renewed.[2]

It will here be convenient to give, by anticipation, some account of the further treatment of this question, which goes to the very heart of the problem of procedure. The unsatisfactory state of progress with business, brought about by the eventual failure of the attempts at improvement made after 1871, caused the procedure committee of 1878, the next which was appointed, to concern itself chiefly with a thorough consideration of the rules as to taking up supply.

Sir Erskine May and the Speaker, Mr. Brand, joined in strongly advocating the restoration of the rule passed

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[1] The text of the order was as follows: That whenever notice has been given that estimates will be moved in Committee of Supply and the committee stands as the first order of the day upon any day, except Thursday and Friday, on which Government orders have precedence, the Speaker shall when the order for the committee has been read, forthwith leave the chair without putting any question, and the House shall thereupon resolve itself into such committee, unless, on first going into committee on the Army, Navy or Civil Service estimates respectively an amendment be moved relating to the division of estimates proposed to be considered on that day.

[2] See Report (1878), Minutes of Evidence, Qq. 72, 73. On the Civil Service estimates the contents were so various and dealt with so many branches of administration that the requirement of relevancy produced practically no limitation.

in 1872 and subsequently dropped. Several proposals to the same effect were before the committee.[1] Of these the least stringent was accepted, namely, that on one day in the week only (Monday) the House should go into Committee of Supply without question put, and consequently without giving any opportunity to move disturbing amendments. Both the Speaker and Sir Erskine May were urgent in advising the extension of the same rule to the second Government day (Thursday); and both suggested to the committee the eventual reintroduction of the rule of progress. But none of these views found favour: so severe a limitation on the rights of initiative and freedom of debate seemed unacceptable. The elaborate discussions and examinations in the committee yield the following clear results:— (1) It was necessary to place some check upon the unlimited freedom of preventing the taking up of supply. (2) Criticism of the management of the business of the state and the conduct of the Government in general would be unduly hampered by the limitation of debate to the first days for discussing the three chief heads of the estimates. (3) It would not do to insist upon motions of this kind being thrown into the form of amendments, and being forced to be relevant to the heading of supply proposed for discussion: the question for consideration was not how to manage the discussion of the estimates, but how to adjust the conflicting claims of private members on the one hand to general political initiative, and of every Government on the other hand to all reasonable facilities for dealing with its financial proposals. (4) Adherence to the strict letter of constitutional principle, *i.e.*, only allowing the raising of concrete grievances against the Government, would be impracticable and difficult to enforce, as it would not call for very much ingenuity to enable a member to frame his contentions in the required form. The majority of the committee came to the conclusion that they ought to secure to

[1] Four different proposals were formulated: (1) Re introduction of the rule of progress; (2) the securing of one Government day for supply; (3) restriction, even of relevant amendments, within certain limits; (4) the postponement of amendments to a later stage of supply. See Report (1878), Minutes of Evidence, Q. 380.

the Government one day a week for supply, by making it impossible to move amendments on that day. They were not unaware that by so doing they were proposing a substantial addition to the power of the Ministry in the House; nor did they fail to acknowledge that it was in the interest of the state that their hands should be strengthened.[1]

On the other hand, it was conceded by the Speaker that the existing practice was convenient in many respects, as it secured the right of bringing up in an orderly manner subjects not important enough for an independent motion but yet proper to be publicly discussed.

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[1] The following extracts from the examination of the Speaker point to this:—

"*Sir Walter Barttelot*. Do you think that the House would very readily consent to giving up the two days?—I am not prepared to say whether the House would adopt that course or not, but I think if the House were to make a trial of it they would be satisfied with it.

"Would that not give enormous power into the hands of the Government?—It would give them great power to carry on one of the first functions of the House, which is to vote supplies to the Crown.

"But to a degree that they have never had the power to do it before?—That is true; but from not having had that power, considerable inconvenience has been suffered." (Qq. 442–445.)

Also as to the constitutional principle:—

"*Mr. Knatchbull-Hugessen:* With regard to grievances preceding supply, whatever may have been the origin of that system, do you not think that at present it is so much to the interest of the Government that any real grievance should be discussed in the House of Commons rather than made the subject of comments in the press without this discussion, and that it is so much to the interest of the Government also that no imputation should rest upon them of avoiding a discussion of such grievance that although further restrictions might be imposed upon the privilege of members to move amendments on going into supply, there never will be any practical difficulty in bringing any real grievance before the House?—No, I do not think there will be any practical difficulty in getting any real grievance brought before the House.

"Which do you think is the more important, that every individual member should have an opportunity of airing a crotchet, or of bringing before the House that which he may imagine to be a grievance, but which the great majority would not consider to be such, or that greater facility should be given for the important business of the country being carried on with due expedition and certainty?—The first object, of course, is to carry on the important business of the country, which is at present very much hindered.

"And in order to obtain that due expedition and that certainty you think it would not be hard to restrict in some measure the privileges of the individual members?—That is my opinion." Qq. 541–543.

The resolution of the committee which followed a middle course, was as follows: "That whenever the Committee of Supply or the Committee of Ways and Means stands as the first order of the day on a Monday, Mr. Speaker shall leave the chair without putting any question."

The House of Commons on the 24th of February 1879, in adopting the committee's suggestion, appended a further concession to private members, as against the Government, in the shape of a proviso that on Mondays amendments might be moved or questions raised on first going into supply on the Army, Navy, and Civil Service estimates respectively, such amendments or questions being relevant to the estimates proposed to be taken. The prohibition of amendments, moreover, was only to affect the motion for going into supply on the ordinary estimates under the above heads, and would not exclude them if the Government were asking for a vote on account or if the committee was to consider supplementary estimates. This resolution was renewed in 1882 as the eleventh of Mr. Gladstone's proposals for amending the rules; but it was then extended to all days on which Committee of Supply stands as an order of the day, whatever day of the week it may be. In this shape it forms part of the present order of business, as Standing Order 17.

In the debates on these new standing orders free expression was given to the objections felt on many sides to the tendency towards lessening the initiative of members. The old views of Conservative party leaders were brought into the field. Mr. Rylands recalled the words of Lord Palmerston which, on account of the typically English view of Parliament contained in them, deserve to be rescued from oblivion. He had said, during a procedure debate in 1861, "This House has another function to discharge, and one highly conducive to the public interests,—namely, that of being the mouthpiece of the nation, the organ by which all opinions, all complaints, all notions of grievances, all hopes and expectations, all wishes and suggestions which may arise among the people at large, may be brought to an expression, may be discussed, examined, answered, rejected, or redressed. This I hold to be as important a function as the other two"—namely, legislation and granting of supplies. Mr. Parnell, with almost cynical frankness, stated that the new rule would not have any effect in lessening obstructive proceedings: the result proved him to have been in the right. (See *Hansard* (243) 1347; (162) 1492; *Annual Register*, 1879, p. 34.)

We have now traced to its final and complete stage, so far as concerns a large proportion of the business of the

House, the application of a great principle, namely, that *the day's programme should be fixed in favour of the Government* and protected against the free initiative of members. Thus, as is now plain to us, was the change in the relations between Ministry and House which had been going on during the nineteenth century expressly recognised in one important department of procedure. When once the Cabinet had completely become a political organ of the House of Commons, nothing could prevent a greater influence on the management of parliamentary business being assigned to the Government. The Ministry and the House had formerly stood side by side as separate powers; the latter, representing the people, with the privilege of arranging and carrying on its business as it pleased, declared its full independence and exercised absolute power; but this conception receded more and more into the background of practical politics when the notion of a Government in conflict with the House of Commons became inconceivable and absurd. The opposite conception must needs arise: *the order of business of the House, of which the Cabinet is the dependent confidential agent, must be transformed into a serviceable instrument for the function of governing.*[1] The process might be slow, but it must be sure.

We have been able to observe the chief stages in the progress of this change. In 1811 began, as a matter of convenience, the setting aside of special Government days. The limitation thus placed on the initiative of members evoked the expedient of amendments on going into Committee of Supply. The consequent friction led to the exertions described above and their ultimate result in favour of the Government.

The disturbance of the business of the House, which had been very prominent in the last few sessions was thoroughly

[1] In this point, as in many others, we clearly see the impracticability of the theory of the "separation of powers," and that for the whole range of English public law. We shall see, from a discussion in a later Book (Book II., Part vii.), that looked at from the standpoint of the general theory of the modern state, this old *doctrinaire* principle of a constitutional state must, so far as parliamentary procedure is concerned, be regarded as unserviceable, and even opposed in its practical results to state interests.

investigated by the 1878 committee from other points of view. We shall best deal with this question, so far as it was connected with the appearance of systematic obstruction, by deferring it to the next chapter, but this is the proper place to refer briefly to the other important matters, affecting simply the mechanism of procedure, which came up before the committee.

Sir Erskine May severely criticised the disadvantages that had arisen from the customary procedure as to private members' bills. The fact that it had become a rule to give notice at the beginning of the session of all private members' bills and to read them a first time was, as May pointed out, the cause of the order book being invariably overcrowded from the outset. The proposal made to the committee, to place upon bills the same time limit as had been introduced for notices of motion, was seen in the light of May's explanation, to have little to recommend it.[1] In fact the old practice has been left unaltered to this day. It is interesting to note the point made by Sir Erskine May, in agreement with the committee, that the quantity of private members' bills annually introduced was in glaring contrast to the number of those which at the end of the session actually had found their way to the statute book.[2] The reason given by him was the well-established practice of the House to abstain, as a rule, from rejecting a motion for leave to bring in a bill. Both May and the Speaker expressed a desire that a still earlier practice could be revived, that of debating bills before first reading. A large number of private members' bills which had no chance of success might thus be prevented from incumbering the orders of the day.[3] This suggestion has never been adopted: the state of affairs condemned in 1878 still survives, though the number of private members' bills actually discussed and passed is even less than it was at that time.[4] The resolutions recommended

[1] Report (1878), Minutes of Evidence, Qq. 91–94.

[2] *Ibid.*, Q. 123. See table below, p. 121.

[3] *Ibid.*, Qq. 108–135, 605.

[4] See Report (1878), Minutes of Evidence, Qq. 123–136, 608, 647–678. The proposal that a copy of every bill brought in by a private member must be handed in at the Public Bill Office before its second reading was

by the committee to the House on this head forbade the fixing of the second reading or subsequent stage for any day beyond a month from the preceding stage; they also provided that after the 1st of June the whole of the private members' bills set down for any day should have priority according to the stage of progress that had been made with them. The first proposal has never been put into force; the second was adopted on the 29th of February 1888, and has been permanently retained as Standing Order 6. We need only mention May's repetition of his desire for standing committees as a means of facilitating the course of business, because their ultimate establishment in 1882 was the direct consequence of his explanations in 1878.

Great importance also must be attached to the excellent account given by the Speaker of the interference with business caused by dilatory motions for adjournment; in the course of the nineteenth century these had become formidable weapons for putting off the discussion of the business set down for the day. They had grown up in connection with the institution of "Questions."[1] In 1835 the first printed questions appeared on the notice paper. After 1869 they were placed in a special part of the notice paper and a fixed portion of time was given up to them in the hour before the commencement of public business. By degrees it had become usual for a member who was not satisfied with the answer of a minister to begin a debate. It is, however, an ancient and invariable principle of the House that no debate can take place except upon a question put from the chair: the member would therefore, "to put himself right," as the expression was, *i.e.*, to bring his conduct into accordance with the rules, declare that he proposed to move the adjournment of the House.[2] Obviously even the least abuse of

adopted and is now the established practice. The suggestion that such bills should be communicated to the House as appendices to the notice paper was wisely rejected, as this would have caused an intolerable enlargement of the paper, and would have raised serious printing difficulties. Q. 162.

[1] The earliest formal question addressed to a minister was asked in 1721.

[2] In the House of Lords it has always been competent to have an informal debate upon answers to questions without the necessity of a formal motion. See *May*, "Parliamentary Practice," pp. 211, 252.

this practice was attended with great danger to the regularity of business. Irrespective of such motions being the handiest methods of obstruction, of which we shall speak later, it appeared to the Speaker that these sudden incursions were serious disturbances of the principle of "certainty of business"—a principle on which the House laid ever-increasing stress: they prevented all security as to the despatch and order of succession of business in the day's programme.[1]

The words of the Speaker himself give the best description of the situation. "As the committee is aware," he said, "the House settles for itself, day by day, the business that it will take day by day, and the order in which that business is to be taken; but if members, before the public business is called on, are at liberty to raise any question on a motion for the adjournment of the House, it is quite obvious that the order of public business will be entirely disturbed. The practice has prevailed to some extent since I have had the honour of being Speaker, but when it has occurred I have generally deprecated the practice; and in many instances I have succeeded in prevailing upon honourable members to desist from the course. It is certainly highly inconvenient, and should be stopped if practicable."[2] The expedient proposed by the Speaker is of special interest, inasmuch as his suggestion was, some years later, the basis for the standing order introducing urgency motions. He continued: "I only know of one way in which that might be done, and I will endeavour to lay it before the committee. I think it would be inexpedient to lay down a hard-and-fast

[1] Report (1878), Minutes of Evidence, Qq. 323–365. The committee of 1848 had considered a measure of protection against these formal debates as to adjournment; it was suggested that every motion for the adjournment of the House made before the orders and notices of the day had been disposed of, and every motion for the adjournment of a debate, should, after being proposed and seconded, be put without debate. This proposal, after having been carried by the Chairman's casting vote, was afterwards rescinded on the motion of Sir Robert Peel. It was felt that there was too much risk of a majority in such cases being able to stifle an inconvenient discussion by a simple division. See Report (1878), Minutes of Evidence, Qq. 323, 324.

[2] *Ibid.*, Q. 325. See the complaints of the Speaker to a similar effect before the committee of 1848 (*supra*, p. 84).

rule that on no occasion should such a motion be made, because there might be matters of urgency which would require consideration by the House; and it has occurred to me that possibly this course might be taken, that before public business came on, if a member desired to discuss a question of urgency, he should submit it in writing to the Speaker, and that the Speaker should declare to the House that Mr. So-and-So desired to discuss an urgent question. The Speaker would read that question from the chair, and take the sense of the House as to whether it should be put, that question being decided without amendment or debate. The House would hear the question read from the chair, and would be able to say whether it was an urgent question and was one that should be put or not."

The present Standing Order No. 10 adopted by the House on the 27th of November 1882 is almost a literal transcript of this proposal of the Speaker's. This is the history of the introduction of the urgency motion into the rules of the House of Commons.

On reviewing the course of procedure reform during the first four decades after the extension of the suffrage in 1832 it is not difficult to arrive at certain main conclusions. Above all stands out the important result that at the very centre of the movement for improving the rules of the House of Commons lies the *relation of the Government to Parliament*. From the end of the eighteenth century this relation has been the subject of a slow but unmistakable change. Parliamentary government through a cabinet drawn from the majority in the two Houses of Parliament is an institution the beginnings of which reach back to the early years of the eighteenth century: but after the domestic struggles of the first period of George III's reign, closing with the victory of the younger Pitt, it began to assume a more definite constitutional shape. As its outlines emerged with greater precision, the political unity of the ministry became recognised as essential, the whole conduct of government became concentrated in the Cabinet, and the confidence of the House of Commons was seen to be an indispensable condition of its efficiency; the clearer the

constitutional position became, the more did the relation of Parliament, especially of the House of Commons, to a Government drawn from its midst change, the more was it bound to change. We have here mainly to consider the effect of this alteration in relations upon the procedure by which the House of Commons disposes of its business,[1] and have chiefly to emphasise the fact that the Government, for all practical purposes, became a committee of the majority in the House of Commons. Having been made, politically and constitutionally, the agents of the House of Commons, they proceeded with ever-increasing rapidity to bring under their own control all initiative in legislation. The Ministry were entrusted, as servants of the Crown, with the whole of the executive power and patronage, which technically remained with the sovereign; but their very existence depended upon the confidence of the majority of the House of Commons: as a mark of its confidence the House was prepared to hand over to them a predominant influence upon both the matter and the regulation of its action—in a word, the leadership. This has found expression in the name and function of the chief member of the Government in the House of Commons, the Leader of the House.[2] Initiative not only in general policy, but also in respect of the appropriation of the time of the House was transferred entirely into the hands of the Government. We have here the explanation, too, of the fact that while from 1832 the number of important public measures introduced *and carried* by private members has continually decreased, the number of Government measures has sub-

[1] As to the history of the Cabinet and its present position in Parliament, see the remarks in Book II., Part iv.

[2] The title of "Leader of the House" as a technical term does not appear to have been thoroughly established until the middle of the nineteenth century. As late as the year 1840, in one of the debates, Lord John Russell, who was the chief Minister of the Crown in the Melbourne Ministry with a seat in the House of Commons, is not described by this short title: he is referred to as "the noble Lord who has to conduct, on the part of the Crown, the business of the country in this House." (*Hansard* (54), 1172.) Cohen, so far as I can ascertain, was the first Continental writer to use the phrase: it appears in a book of his which appeared in 1868; in his articles on Parliament (*Pölitz*, Neue Jahrbücher, pp. 289 *sqq.*), which appeared in 1847, no use is made of the term.

stantially increased, both absolutely and comparatively.[1] Regarded indeed, both in itself and on account of its consequences, the monopoly of legislation obtained by the Government, both in respect of completion and of origination and preparation, is of the highest importance to modern England. It is by no means a fundamentally new thing; during the two great constructive periods in the development of the English state, those of the three Edwards in the fourteenth century and of the Tudors in the sixteenth, the whole legislative power had been vested in the executive: what has happened since 1832 is a return to the same situation after a period in the eighteenth century during which Government initiative had receded far into the background. But in modern England, it must be remembered, the Government are a vital, inseparable part of Parliament. To this day initiative technically lies with the members themselves: it is only in his capacity as a member of the House of Commons or as a peer that a minister can now introduce a Government bill into the House to which he belongs.

Here, again, we note the well-known characteristic of the British constitution, the retention of old forms with perfectly new contents. "It is almost impossible," says Sir Courtenay Ilbert,[2] "to emphasize too strongly the enormous change which the Reform Act of 1832 introduced into the character of English legislation." And he points out that in the eighteenth century general legislation altogether was unim-

[1] This is very true of the present day, as a reference to the following table will show: it is taken from the excellent book of *Sir Courtenay Ilbert* on "Legislative Methods and Forms" (p. 215), and is a comparison of the shares of private members and Government in legislation in individual years:—

Session.	Total Bills introduced.	Government	Private Members'	Royal Assent.	
				Government	Private Members'
1895	263	66	197	38	12
1896	256	65	191	44	16
1897	263	67	196	54	16
1898	259	65	194	49	17
1899	224	53	171	37	16
1900	238	66	172	49	15

[2] "Legislative Methods and Forms," p. 211.

portant in amount: that the parliament of that time passed many laws which would now be classed as local, acts for traffic regulation, acts regulating the conditions of labour and industry, and the relief of the poor, but that it created no new institutions. And what a difference in the situation of the Government! Sir Charles Wood (afterwards Lord Halifax), talking to Mr. Nassau Senior about the year 1855, is reported to have said: "When I was first in Parliament, twenty-seven years ago, the functions of the Government were chiefly executive. Changes in our laws were proposed by independent members, and carried, not as party questions, by their combined action on both sides." At that time it was not the business of the executive government to initiate fresh laws: the speech from the throne did not embody a programme of legislation. In the course of a generation all was changed. Every member knew that without the help of the Government there was little chance of his bill becoming law. The main cause of the throwing upon the Government the chief, it may be said now the exclusive, initiative in all important legislative problems is the great complexity of modern legislation, which at every turn is confronted by difficulties and considerations as to countless economic and social problems and vested interests. The formation of modern central and local authorities in England has led to the construction of an executive machinery, the intricacy of which corresponds, no doubt, to the involved needs of modern society, but which gives much cause for consideration upon any change in existing law. And as legislation has become more complex, Parliament and the public have become more critical. Bills are nowadays reproduced, summarised and criticised by newspapers, are made the subject of comment by countless bodies, are studied by constituents, and therefore cannot be disregarded by members. It is scarcely possible, except for the Government, to satisfy all these conditions. A further practical result has been to increase the care bestowed by the Government upon the purely technical matter of drafting legislative proposals, as shown by the appointment of a new and important officer to whom this duty is assigned, the parliamentary counsel to the Treasury. The post, it is instructive to note, was first made permanent in 1837 in

connection with the Home Office, and in 1869 it was organised upon its present footing.[1]

Following on the complete change in the relations between Ministry and House there is, as we have learnt, a further consequence affecting the development of procedure, namely the placing at the disposal of the Government of a definite part of the time and strength of the House. The Ministry, having long since become a political organ of the House, represent the element of system in the application of its time and strength. Upon them is laid the duty of seeing that the proceedings, so far as possible, serve the purposes contemplated by the Government, and also that these proceedings are protected, so far as possible, against the chances of political warfare, the moods of an assembly, and the interruptions of individual members or groups of members. From what has gone before it is clear that this apparently technical improvement in procedure is the expression of a political phenomenon with most important constitutional consequences. The growth of the system of parliamentary government completely changed the nature of the Government itself. In another connection we shall have to show that this result has in its turn begun to have a far-reaching reaction upon procedure.[2] The immediate result upon it may be easily surveyed.

"In all the improvements that we have yet made," said the Speaker in 1854, "we have endeavoured as much as possible to let the House understand exactly what questions they will have to discuss, and to prevent surprises, and also to give some certainty to our proceedings."[3] As against this the private member represents the element of political mobility, of the initiative of individuals or groups of members united by class or other interests: further, he stands for the right to criticise, the exercise of which is a duty binding on members on both sides of the House, so that at a decisive juncture there may always be a proper expression of public opinion. Criticism is specially incumbent on members of the Opposition, for whom even more latitude is

[1] See *Ilbert*, "Legislative Methods and Forms," pp. 78–88, 218.
[2] See *infra*, Book II., Part VIII.
[3] Report (1854), Minutes of Evidence, Q. 516.

required so that they may be able to use all the expedients of party warfare. Thus, in consequence of the system of parliamentary party government, the interest of the state, at all times linked to the interests of the party in power which desires to retain its position, is continually placed in antagonism to the interests and efforts of individual members in both parties: it follows that the party of the majority, which is answerable for the government of the country, demands an increasing share of the time of the House, and an increasing influence on the arrangement of the subject-matter of its business.[1] It was only to be expected that weapons of defence would be sought for by private members to prevent this limitation of free parliamentary action. They have only been able to delay, not to arrest, the course of events. The ever-advancing suppression of the private member for the benefit of the Government has proceeded without pause, even if it has been slow and accompanied by certain compromises. These compromises mark the amount of success which has attended the efforts of private members to maintain their position as an active element in the House of Commons, and in the period we have been considering they were not inconsiderable. The unofficial members of both parties endeavoured, by cunningly-devised arrangements, to entrench themselves against the superior power of the Government. Hence came the provisions in the modern rules, described in detail above, as to the admissibility of open debates on Government and supply days, and also the formal motions for adjournment arising on questions. From the beginning of the nineteenth century procedure took upon itself a certain artificial and far-fetched character quite alien to the original lines of the historic order of business. It was distinctly in a state of transition. But the outlines of the new conception of the order of business can be clearly perceived. In spite of the advances which the principle of parliamentary government had made between the time of

[1] The fact that the Ministry are always delegates of a party is of fundamental importance in the English system of government: it is necessary never to lose sight of the actual existence of political parties. See, as to this, the discussion, *infra*, pp. 127 *sqq.*, and in Book II, Parts iv and v. *Mr. Sidney Low* ("Governance of England," pp. 34-42) has lately made some striking observations on this point.

William III and Sunderland and the first half of George III's reign, there was at the latter period no little justification for the view that, in the factious struggles of the day, the House of Commons, in opposition to the Ministry, had to assert itself as a special, nay as the highest, political authority. At such a time the rules of procedure were still the ramparts behind which all pure and freedom-loving elements took shelter against the powers of corruption, so freely put forth in the House by Court and Government. But in the nineteenth century that was all in the distant past. Instead of mistrust of Government being a cardinal constitutional virtue, it had come to pass that the confidence of the majority was a characteristic possession of the executive. Accordingly, if parliamentary procedure is to be looked upon as a means for disposing of business, then from the time of the complete and permanent establishment of the method of party government, it must be regarded not only as an institution of Parliament, but also as an *aid to the Ministry in governing*. In a state all the affairs of which are placed in the hands of Parliament and are looked upon as the tasks which Parliament has to perform, a Cabinet which owes its existence to the confidence of the majority in the House of Commons and which is answerable to the nation for the fullest possible supply of its wants must be able to exercise a far-reaching and decisive influence on the despatch of the business of Parliament. The procedure of the House and its rules had formed in earlier days a defence against Crown and Government, sheltering the nation, or at all events those classes which were represented in the House of Commons; those days had gone, and procedure and rules were bound to change their character and, within certain limits due to the system of parliamentary government, to become efficient instruments in the hands of the parliamentary Ministry.[1]

There is yet one other matter of importance to be made clear if we are to attain to a proper understanding of this first period of procedure reform. It is a striking fact that amendment of procedure was, almost from beginning

[1] See the speech of Mr. A. J. Balfour in the House, on the 30th of January 1902, "After all, our business now is not to fight with the Crown."

to end, treated without party spirit, not as an issue between the two great parties but as a problem for the House of Commons as a whole. The minutes of the proceedings of the committees of enquiry and the debates in the House prove this beyond doubt. There were, of course, sharply expressed differences of opinion upon special questions of procedure and procedure reform, and doubtless there were always in the House declared opponents of the tendency above indicated; but opposition was always directed to the matter of the proposals, and was conducted without regard to party relations. Supporters and opponents of individual innovations and reforms were found alike on both sides of the House. Reform of procedure was a subject upon which the House of Commons felt as a unit. The interest of the state was, as a rule, what determined the point of view: those whose aim was to maintain the equality of private members with the Government were actuated by the feeling that political responsibility is laid upon all members alike, and that its diminution by increasing the privileges of the Government under the rules is to be dreaded. This limitation of scope and diminution of responsibility appears to many observers of Parliament to be seriously detrimental to the interests of the state.

The absence of party spirit in the discussion of procedure is not to be looked upon as an isolated phenomenon: it is a *typical and distinguishing trait* which, when rightly grasped, is a clue to the inmost meaning of English nineteenth century parliamentary history and of the whole English party system. There are always a number of important political subjects which, like parliamentary procedure, are treated and discussed by the House of Commons in a spirit of unity, with a feeling that it represents the nation as a whole; such matters are, therefore, not dealt with on party lines. This conduct springs from the very character of the great English parties. Without wishing to go beyond what is absolutely necessary, an endeavour must be made to explain the connection, by taking a glance at the development of English parties in recent days.

In the forty years which followed the Reform Act of 1832 Parliament and the party system in England peacefully

developed on the path marked out by the reform of the franchise. This decisive measure was the consequence of deep, almost revolutionary, excitement in the nation and in Parliament, and was a fruit of the warfare of the two historic parties; but the second Reform Act of 1867, which had really a more far-reaching effect than the first, became law without any real struggle either within or without the walls of Parliament. The question of the franchise reflects most clearly the leading characteristic of English political history during this period—the lessening, almost to vanishing point, of the differences of principle between the historic parties. The Whigs and Tories of the Thirties had become Liberals and Conservatives. But the repeal of the Corn Laws and the inauguration of economic Liberalism by Sir Robert Peel, the time-honoured leader of the Tories, had permanently split the Tory electorate and party into two sections. On the other hand, the agitation for the first Reform Bill had divided the old Whig party, and a Radical wing had been formed, which the Free Trade movement of the Forties and Fifties had considerably strengthened. Thus within a generation from the first extension of the suffrage internal discord existed in both parties, though no section had actually taken up the position of an independent party. The new great Liberal party was formed by the union of the majority of the traditional Whigs with the Radicals and Peelites, and under Mr. Gladstone's leadership this combination of originally heterogeneous elements was maintained for a generation. Again the reconstruction of the new Conservative party was gradually effected, under Disraeli's clever but unprincipled guidance, by the express or tacit adoption of most of the political, economic and social reforms for which Gladstone's reforming Liberalism stood. Only by such means could the new Conservative party hope, in face of the democratic tendencies of the continually widening electorate, to become acceptable to the masses, to acquire a majority and eventually to be able to form a Government.

The English parliamentary system retains, therefore, the old characteristic of two great party camps, alternately succeeding in gaining majority and power. But they are now composite camps in both of which the various interests

of political and social life find more or less powerful representation, rather than internally homogeneous armies which stand sharply opposed. There are certain historic traditions taken over from the Tories and Whigs which continue to influence modern Conservatives and Liberals; but as it was with the aristocratic Tories and Whigs of the end of the eighteenth century, so also is it with their democratic legatees; the differences of principle have become less and less distinct till they have almost disappeared. The two great parliamentary parties are not divided by any deep unbridgeable chasm in the social body of the nation, or by great differences in principle which find their expression in the party cleavage. The same interests of rank and class are represented in both, though with different political shades on many points. It is, for instance, the fact that the landed interest is almost exclusively connected with the Conservative party, that the Trade Unions and the Nonconformists are traditionally Liberal; that, again, the chief supporters of the Established Church are almost always Tories. On constitutional questions, however, there has been for some time only one deep line of division, that drawn by Mr. Gladstone's Home Rule policy; and even this has been considerably weakened during the last ten years. The two parties which compete for power are not separated by the maintenance of irreconcilable principles, but by differences of method in approaching individual concrete questions of domestic, foreign, financial, economic, social, and ecclesiastical policy; their differences, however important they may appear to eager partisans, are but varieties of method among men standing upon the broad platform of common national policy, common fundamental conceptions, and common interests. The marvellously strong national feeling, the intensely living historic tradition, and the deep conservative spirit which are so ingrained in all classes, carry the unexampled political and social cohesion of England, as compared with other states, to a height transcending all partisanship. This is the ultimate reason and real explanation of a characteristic phenomenon of both centuries of parliamentary government, namely, that *in the classic land of party government and party warfare, the*

great collective interests of the state have at all times been, expressly or by tacit consent, removed from the province of party.[1]

It is, when all is said, due to the possession by Parliament as constituted after 1832 of this political cohesion that it has been possible to preserve the remarkable system of government by party ministries which was evolved out of the aristocratic parliamentary oligarchy of the eighteenth century. The system in reality only acquired strength because the parties of the time—that of the reigns of the first two Hanoverian kings—were not parties in a strict sense of the term : they were only fractions of a homogeneous governing class, grouped into two separate camps under the influence of commanding personalities, and united in the advocacy of certain special political tendencies or ideas. The cautious franchise reform of 1832 only summoned to Parliament a definite class which had long shared in the representation of national interests, and thus succeeded in maintaining unbroken the cohesion and social uniformity of the House of Commons, and therefore also the old basis of parliamentary government. To speak paradoxically, England possessed and still possesses its system of party government through a parliamentary cabinet, by reason of its *lack of parties in the Continental sense,* because it is free from all internal contests which threaten national unity or attack the political and constitutional foundations upon which the government of the kingdom rests.[2]

[1] The present situation in English domestic policy (1905) gives a new version of the old picture of the dissolution and reformation of the two parties under the stress of a new political idea, namely, Mr. J. Chamberlain's battle-cry of Protectionist Imperialism. The effect up to the present time has been practically to drive the idea of Irish Home Rule, as a dividing line, out of the region of practical politics. The next elections will show the two historic parties—as fifty years ago—fighting the battle of Free Trade against Protection. Of course there are other questions which affect the masses—problems of education, social problems, taxation—but they take a secondary position.

[2] The late Prime Minister, Mr. A. J. Balfour, at Haddington on the 20th of September 1902, delivered a most instructive speech on British party government, which is so often misunderstood on the Continent; his remarks are so striking and, coming from him so authoritative, that they shall be given in full. He said: "The British constitution, as it is now worked, is essentially a party system; but a party system can only be worked under really healthy conditions, can only be worked, at all events,

A sufficient explanation has now been given of the fact that procedure reform moved on during the forty years from 1832 in peace and escaped from becoming a subject of party contest. Since both historic parties have alternately to bear the responsibilities of office, and since, as we shall have to show later on, the Opposition for the time being has a noteworthy though indirect share in the transaction of the affairs of the state, the two parties look upon the rules of the House as instruments for the use of both alike. The only obstacle to remodelling the rules in the sense we have been discussing is that interposed by the individual member's reluctance to be pushed aside for the benefit of

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under the best conditions, when the differences between the parties, though real, are not fundamental, essential, or of so revolutionary a character that they divide the classes of society or the sections of opinion in hopeless alienation one from another. It has happened in our history that the differences between the two parties at a given moment did not rest on any great question of public policy at all—it was a question of men, not of measures, and often not of principles. The danger of that condition of things is that politics become a mere game, a sordid game. It was, at some periods of our history, when men fought for a prize of office, for the emoluments of office and for the patronage of office, and when they had nothing better to fight for. Luckily both patronage and emoluments of office have been, by wise legislation, so reduced that that element of sordid temptation is, I believe, for ever removed from our public life. But it, nevertheless, remains the fact that if there be really no question between the two parties, politics become too much like an international football match, too much a mere game in which everybody is keenly interested for the purpose of winning—winning an election, winning a division, getting their own ministers in and getting the other ministers out, and too little a question of high political consideration; yet that is by far the best of the two alternative evils. The other evil, from which some of our Continental neighbours in the course of their history bitterly suffered, is that they have attempted to work the party system when the division between parties is so vital and fundamental that the 'ins' desire to destroy the 'outs,' and the 'outs' attempt to become the 'ins' by revolutionary methods if no other methods are open to them. That is not the condition of things under which you can, in my judgment, work the representative system with any hope, with any prospect of success; and it is because we have avoided that, more, perhaps, by our own good fortune than by the deliberate intention of either party leaders or party followers—it is because, I say, there seems to be some natural moderation in our British blood which enables us to be political enemies without attributing every infamous motive to those to whom we are opposed in politics—it is because we are capable, and can judge calmly, relatively calmly, and criticise charitably, relatively charitably, that we have made the British constitution the great success it is."—(*Daily Chronicle*, 22nd September 1902.)

the Government; and this has, of course, no reference to his party relations.

The same facts will explain a further remarkable feature of the parliamentary procedure of the period. As already pointed out, the distinctive characteristic of the procedure finally developed in the eighteenth century was the protection of the minority. This principle also can only be understood as one of the consequences of the cohesion which has marked the House of Commons since the Revolution. The opponents who face each other are equally able and willing to undertake and become responsible for the government of the kingdom; more than this, they are ready to recognise each other's capacity. The prospect of loss of power awakens in the hearts of the ruling party no fear of destruction for themselves and no fear of an attack upon the constitution for state and country. The battle is one upon an enclosed field. It is, therefore, quite in place that there should be rules of battle to assure fair play to each party. For both are members of a nation, one in fact and feeling. The majority holds the great advantage of being able to realise its wishes in the institutions of government; but, on the other hand, for this very reason the minority ought to have all conceivable rights of expressing its views and aims, and ought to be allowed free use of all permissible weapons of speech and political tactics in its fight against the expression of the wish of Parliament which is a consequence of possessing a majority. For it is just as much the interest of the nation to ascertain whether the majority can maintain itself as such against an able and powerful attack and make proper use of the great privilege of conducting the government, as it is to take care that the will of the ultimate majority shall be treated as the will of the nation. *Protection of the minority is, therefore, in the British Parliament no mere privilege of the minority for the time being; it is a vitally important institution developed in the highest interests of a nation ruled by Parliament.* The majority for the time being has no true interest in weakening the principle; for it has always to expect the day when it will in turn be the minority and will need this palladium as a means of advocating its own party conception of the interests of the state.

What gives the whole remarkable system its vitality, and, more, what secures to it a free course, is the "common sense" which has for hundreds of years been one of the qualities of the English ruling class. Their common sense forms the nucleus of the political cohesion which has been so much emphasised above, and which we see, therefore, to be connected with a deeply implanted national trait. It is due to their possession of *this* quality that the English parties, always eager for combat and full of the national desire for action, are nevertheless ready to cease fighting as soon as it becomes purposeless or opposed to the general welfare. Thus it is finally political prudence which secures the majority against abuse of the principle of the protection of the minority. The English parliamentary system is unintelligible except as a national system of government, as a product of the special political genius of the English nation, and therefore a result of the whole constitutional and social development of England, especially of that of the last two centuries; only as a part of the whole system are we able to comprehend or entitled to criticise the procedure of the House of Commons or its remodelling during the century that has just passed away. The plainest evidence of what must be considered the characteristic of this reform from 1832 to 1872, its fundamental conservatism, is that the rights of minorities were not materially attacked. As yet the political and psychological principles which brought forth at the same time the system of parliamentary party government and the principle of the protection of the minority had hardly met with serious challenge; the parties, in the main, still faced each other as members of a uniform body, as organic parts of a socially homogeneous representation of the people, not as representatives of diametrically opposed class interests; in spite of all electoral reforms the aristocratic middle class character of the House of Commons had not been essentially affected; and in spite of numerous violent struggles between individual party leaders and their followers there had been no party formation which repudiated the traditional form of the state or the unity of the realm. But there had been warnings of events which were to make sweeping changes in all these directions.

CHAPTER II

OBSTRUCTION BY THE IRISH NATIONALISTS AND ITS OVERTHROW[1] (1877–1881)

THE continued development of reform in the rules of the House of Commons reached a new and critical stage about the middle of the Seventies in the nineteenth century, owing to the direct pressure of a most important political event, the formation of the parliamentary Home Rule party. This is not the place to touch even slightly upon the changing but always melancholy story of Irish National parties and their policy since the union of Ireland with Great Britain. It will be necessary, however, to make some preliminary remarks on the political position and organisation of the Irish at this crisis in parliamentary history, in order to explain the dominant influence which Irish affairs asserted on the transformation of the order of business in the House of Commons.

From the beginning of the nineteenth century, two distinct tendencies have simultaneously been at work in Irish movements, and have alternately come to the front: the achievement of Irish independence has been the goal of both; but, while the one has produced a party trusting entirely to revolutionary methods and agitation, the other has been represented by a constitutional party, using legal weapons and endeavouring at the same time to promote in Parliament measures for the economic and social improvement of Ireland. After the forcible suppression of the Irish rebellion of 1848 and the fruitless efforts of the Young Ireland party, the revolutionary tendency had, by the end of the Fifties, once more undergone considerable development and become the choice of the Irish people. With the zealous

[1] For this period in general, see *Annual Register*, 1875 to 1882; *John Morley*, "Life of W. E. Gladstone," vols. ii. and iii.; *Justin McCarthy*, "A History of Our Own Times," vols. iv. and v.; *Barry O'Brien*, "Life and Letters of Charles Stewart Parnell" (2 vols.), *Torrens*, "Reform of Procedure in Parliament, 1882"; *Michael Davitt*, "The Fall of Feudalism in Ireland."

help of the American Irish, one might even say under their leadership, the secret society called the Irish Revolutionary Brotherhood, but better known by the name of the Fenians, was formed; in a surprisingly short time this organisation commanded and led the masses in Ireland. Its operations were to a certain extent criminal; they were confessedly designed to terrorise public opinion and the English Government; to counteract them Parliament was obliged in the year 1866, as on so many former occasions, to take the severest measures of repression in Ireland.

By the energetic use of special regulations and special tribunals the danger caused by the Fenian conspiracy was averted,[1] but at the same time the conviction began to force itself upon the leaders of English opinion, especially upon those of the Liberal party, that mere suppression of disorder constituted no real advance; that the unhappy island needed to be helped into economic prosperity and thereby into a state of political and social rest; and that the only hope lay in a course of constructive legislation calculated to produce a radical improvement in the condition of the country. This conviction led to the two great achievements of the first Gladstone Cabinet (1868–1874) in the domain of Irish policy, namely, the Disestablishment of the Church of Ireland (1869) and the first great Land Act (1871). These measures were the first of the long series of great and, it may now be said, successful legislative efforts of Parliament to attack the Irish difficulty at its roots, namely, in its agrarian aspect. There very soon followed, partly, no doubt, as an effect of the new policy inaugurated by Mr. Gladstone, a significant transformation of party relations in Ireland itself. Since the death of O'Connell, the great agitator of the first half of the nineteenth century, the Irish National parties had abandoned constitutional agitation as fruitless. The movement of 1848 and, more avowedly, the Fenian movement had made no attempt to gain their end, the independence of Ireland, by political activity in Parliament, but had endeavoured to succeed by rousing the masses to revolution. In these decades, therefore, the Nationalist elements in Ireland had

[1] Interesting descriptions of the rise and development of the Fenian party are given by *Davitt*, "Fall of Feudalism," pp. 74–78.

no distinct party representation in Parliament and the constituencies were divided between Liberals and Conservatives, as in England and Scotland. But after the year 1870 there came a change. The extension of the franchise in 1867, together with the Ballot Act of 1872, which for the first time allowed secret written voting, gave preponderance all over the kingdom to the more numerous classes of the population and thus rendered possible the emergence of the political aspirations of the masses in Ireland. At the same time, moreover, the old idea of the liberation of Ireland from English supremacy acquired new shape and strength owing to the formation of the "Home Rule" party. Elements hitherto separated could now combine for the one purpose of demanding the repeal of the Union of 1801, and not a few Irish Protestants found themselves able to enter into alliance with the Catholic majority of the people in a joint effort to obtain self-government for Ireland. The new party sought to achieve its end, in defiance of all Irish tradition, by trying to unite all Irishmen in its pursuit whatever other political ideals they might be striving to attain. It took up a hostile position to both Tories and Whigs and thus enabled all sections of Irishmen, of both political tendencies, constitutionalists and revolutionary Fenians, to work together in a reorganised political movement. The founder and leader of the new group, which had decided to enter the Imperial Parliament as an independent third party, was Isaac Butt, a moderate politician, by nature conservative, but driven by his experiences as counsel for the defence in numerous Fenian prosecutions, in the direction of Liberalism. The meeting at which the new party was founded was held at Dublin on the 19th of May 1870. The very first bye-elections brought it success, and the general election of 1874 gave it a complete triumph: fifty-nine Home Rulers were returned to the parliament in which Disraeli's great cabinet with a majority in the House was at the head of affairs.[1]

[1] The rise of the Home Rule party is well described in Parnell's biography by *Barry O'Brien*, vol. i., pp. 44–69. For a description of the inner connection of the new Home Rule party with Fenianism and the Land League see *Davitt*, "Fall of Feudalism," pp. 79–115. According to him the inventor of the name "Home Rule" was one of the founders of

They set to work at once in good earnest; it was Butt's object by motions and legislative proposals emanating from the Home Rule party to bring Ireland's true needs before public opinion and Parliament, and so, in course of time, to pave the way for the legislation which was desired. In carrying out their scheme the Home Rulers determined strictly to follow English parliamentary tradition, both in their demeanour and in their entire obedience to the rules of the House.

The only immediate result was to prove that their motions and bills could gain scarcely any attention; when at last they came up for discussion it was not till the small hours of the morning, and they were rejected by overwhelming majorities. Thus the sessions of 1874 and 1875 passed by without a single success for the Irish cause. In the latter year, however, an event occurred the importance of which could have been foreseen by no man—Charles Stewart Parnell was returned at a bye-election for the constituency of Meath. We cannot here undertake any detailed description of the career and character of this remarkable man, whose influence in the latter years of the nineteenth century on Anglo-Irish politics and consequently on the whole of English domestic politics, was greater than that of any other single person.[1] We shall be obliged, however, to consider somewhat at length

the party—Professor Galbraith, of Trinity College, Dublin. It may be useful here to enumerate the chief points in the programme of the Home Rule party. They were formulated as follows:—(1) This association is formed for the purpose of obtaining for Ireland the right of self-government by means of a national parliament. . . . (3) The association invites the co-operation of all Irishmen who are willing to join in seeking for Ireland a federal arrangement based upon these general principles. (4) The association will endeavour to forward the object it has in view by using all legitimate means of influencing public sentiment, both in Ireland and Great Britain, by taking all opportunities of instructing and informing public opinion, and by seeking to unite Irishmen of all creeds and classes in one national movement, in support of the great national object, hereby contemplated. (5) It is declared to be an essential principle of the association that, while every member is understood by joining it to concur in its general object and plan of action, no person so joining is committed to any political opinion, except the advisability of seeking for Ireland the amount of self-government contemplated in the objects of the association. (*Barry O'Brien*, vol. i., p. 66.)

[1] See *Bryce*, "Studies in Contemporary Biography" (1903), pp. 227–249; *Davitt*, "Fall of Feudalism," pp. 104–115.

certain features of his career and character, inasmuch as an essential part of them, perhaps the essential part of them, is vitally connected with the transformation which took place at this time in the rules of the House. Parnell was, so to speak, the inventor of a new kind of political tactics, a new expedient for gaining power in political warfare, which, as we know but too well, has since his time run its melancholy course of victory through nearly every parliament in the world. He was the founder of systematic obstruction. By its use Parnell, in the comparatively short period of his parliamentary career and his leadership of the Home Rule party, produced most far-reaching effects on Irish legislation; but, at the same time—and this is why we must concern ourselves particularly with him—he became by his parliamentary tactics the involuntary but irresistible cause of a total reform in the conduct of business in the House. Parnell's attempt at revolution under parliamentary forms, waged with the weapon of systematic obstruction, and transported by him to the floor of the House of Commons, was counteracted and warded off by means of a complete reconstruction of the order of business carried out by the House itself. The origin of these events has now to be described.

When Parnell entered Parliament the Home Rule party, under Butt's leadership, was content, as already stated, with advocating Irish interests in strict accordance with parliamentary forms, zealously enough, but in the most peaceful manner. These tactics, which produced no effect on Government or Opposition, found opponents here and there in the ranks of the party itself. As such, Parnell's well-informed contemporary biographer names two members of the Irish party, Ronayne and Biggar, of whom the latter only came forward actively.[1] Biggar stigmatised as nonsense all parliamentary rules and conventions, and maintained that the only correct course for the Irishmen was to worry the House, and by their conduct in Parliament to give palpable proof to it and to public opinion of the disregard shown to Ireland; but he was not content with theory, he made an attempt to translate his view into action. By a remarkable

coincidence it happened that on the very day, the 22nd of April 1875, upon which Parnell took his seat in the House of Commons, Biggar was occupied in delaying the discussion of an Irish Coercion bill in committee by a four hours' speech of extraordinary discursiveness.

Parnell held himself in reserve during this session and the next. As yet he was an insignificant and unknown member of the Home Rule band. But Biggar's attempt and the conception, as advocated by Ronayne in the councils of the party, made a deep impression upon him. Ronayne is reported to have said publicly, as early as 1874: "We will never make any impression on the House until we interfere in English business. At present Englishmen manage their own affairs in their own way without any interference from us. Then, when we want to get our business through, they stop us. We ought to show them that two can play at this game of obstruction. Let us interfere in English legislation; let us show them that if we are not strong enough to get our own work done, we are strong enough to prevent them getting theirs." [1]

The idea took firm root in Parnell's mind. His biographer relates how much trouble Parnell took to increase his very small acquaintance with ancient Irish history and how, to justify his methods to himself, he sought for precedents of obstruction in parliamentary history.[2]

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[1] *Barry O'Brien*, vol. i., 93.

[2] *Ibid.*, vol. i., pp. 269 and 270. A short survey of earlier appearances of obstructive methods in the English Parliament may here be given. Perhaps the first instance of the intentional use of obstructive tactics is to be found in the struggles over the Grand Remonstrance against the proceedings of Charles I; this was only carried, on the 22nd of November 1641, after a debate lasting from three o'clock in the afternoon to the following morning, so that the House looked like a starved jury (*Rushworth*, Collections, Part iii., p. 428). The next case occurred in the debates of the year 1771 as to allowing publication of parliamentary reports in newspapers. This was championed by a minority under the leadership of Edmund Burke, who in one sitting called for no less than twenty-three divisions "Posterity," said Burke subsequently, "will bless the pertinacity of that day." (See *Roylance Kent*, "The English Radicals," p. 61.) In the year 1806 the Tory wing, which refused to act with the Coalition Government of the day, availed itself of obstructive tactics so as to prevent the influence of the Radicals obtaining any Liberal legislation from the Fox-Grenville Cabinet. "For night after night Castlereagh

It was with great satisfaction that Parnell ascertained from his studies that he could appeal to the example of the great Irish patriot O'Connell, who had in 1833 offered a strenuous resistance of an obstructive nature to an Irish Coercion bill proposed by Earl Grey and the Liberal ministry of the day. We see, then, that Parnell was not the actual inventor of obstruction : the House of Commons had often witnessed obstructive conduct by a minority, and the notion of obstruction as a parliamentary expedient had at this very time already sprung up among the Irish without any suggestion from him. The idea was in the air. Nevertheless, Parnell must be considered the founder of this new and dangerous method of tactics. For in all the instances quoted above obstruction had been a short transient episode arising from the temper of the Opposition, and little more than an emphatic protest against the conduct of an over-

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and others made long speeches on no particular occasion, inflicting unbearable weariness upon the ministerial ranks, until Sheridan, as a sort of despairing joke, proposed that the burden should be distributed by the process of forming relays of attendants" (*Harris*, "History of the Radical Party in Parliament," p. 84). During the memorable struggles of the year 1831 the old Conservative, Sir Charles Wetherell, in the sitting of the 12th of July kept the House up till half-past seven in the morning by eight divisions in order to delay the commencement of the committee stage (*Annual Register*, 1877, p. 45 ; *Molesworth*, "History of the Reform Bill, pp. 214, 215). The struggles which O'Connell made in 1833 against Earl Grey's Irish Coercion bill bore an obstructive character. O'Connell availed himself, on the very day of the introduction of the bill, of the antiquated expedient of a call of the House, with the intention of delaying the proceedings. The first reading of the bill occupied seven sittings, the Irish members having threatened to take refuge in repeated formal motions for adjournment if any attempt was made to close the discussion prematurely. A small number of Irishmen and Radicals formed the minority facing the Whigs and Tories, but it took the whole of March to get the bill through committee and third reading (*Annual Register*, 1833, pp. 43, 81). In 1843 there was a similar resistance to an Irish Arms bill. In committee there were no less than forty-four divisions, with minorities varying from five to twenty in number. Lord Palmerston wrote about this a year afterwards : "Experience has shown that a compact body of opponents, though few in number, may, by debating every sentence and word of a bill, and by dividing upon every debate, so obstruct the progress of a bill through Parliament that a whole session may be scarcely long enough for carrying through one measure" (*Ashley*, "Life and Correspondence of Lord Palmerston," vol. i., p. 464). It will be seen that there had been no lack of warnings of the danger of obstruction in the House of Commons.

bearing majority. Parnell changed it into something quite different. He was completely possessed by the thought that Ireland must be freed from her connection with England, and all his efforts were directed to nullifying this connection as expressed by the existence of a united Parliament. With such views he looked upon obstruction in itself as politically just; he did not feel that he belonged to the House in which he sat and voted—he was its enemy. It is worth emphasising that he adopted and used obstruction not as a method of parliamentary warfare, but as a weapon with which to combat, and, if possible, to destroy, the United Parliament as a constitutional device. And there was a further difference between his attempt to hinder the business of Parliament and former applications of the method of obstruction, namely, that it aimed at bringing to a standstill not only a single measure introduced by the majority or the Government, but the whole function of Parliament. Here lay the novelty of his tactics and the reason for the extraordinary effect which they at once produced.

Although, then, obstruction had been heard of before Parnell's time, although the actual idea of hindering legislation, for the purpose of exerting irresistible pressure on Government and Parliament, had been suggested before him, and even to him, the originality of Parnell and his political action remains incontestable. For, as is so often the case in politics, the idea, the plan is nothing; the realisation, the actual working out is everything. Strength of character, not refinement or keenness of logic, is what is decisive in this sphere. Parnell, whose education, on the testimony of his friends, was barely mediocre, whose intellectual interests were insignificant, rose irresistibly and with surprising rapidity to the position of absolute leader of his nation.[1] He was a born politician, with a clear insight into the true meaning of events and an indomitable will as soon as he had a definite end in view. He made Ronayne's idea his own, and that all the more readily as the tactics to be developed from it were in complete accord with his nature, which was simple and practical. He was convinced that it was not by speeches but

[1] Davitt expresses a more favourable opinion of Parnell's knowledge of Irish history, "Fall of Feudalism," p. 115.

only by the opposition of an inflexible will that anything could be wrung from Parliament for Ireland.

Parnell at first stood almost alone, supported only by Biggar and a few of his countrymen. The number of Irish obstructives in the 1877 session never rose above seven. The official Home Rule party and its leader at first stood aside in displeasure and silence; after a time Butt made an open attack on Parnell in the House, and amid the applause of both English parties protested sharply against obstruction. But Parnell remained unshaken and went on with his campaign. The proposals of the Government gave him ample materials, which he used with such skilful application of the rules of business that he was even able to give plausibility to his denial of the charge of obstruction. The Irish Prisons bill and the annual Mutiny bill, the enactment of which legalises the existence of the standing army in England, were then under discussion. Parnell was indefatigable in proposing amendments to these bills. In his choice of topics he conducted himself very ably. "While in the main," says his biographer, "his object was obstruction pure and simple, yet he did introduce some amendments with a sincere desire of improving the measures under consideration." He was especially adroit in his amendments on prison management; on the subject of prisons there were among the Irish a sufficient number of experts, and there were many defects in the treatment of English prisoners, especially those accused of political offences; in this department Parnell succeeded in carrying a series of important reforms.[1] His proposal as to the treatment of political prisoners received the support of the whole Liberal party, and was accepted by the House, as were also amendments moved

[1] "'Parnell excelled us all,' said one of his obstructive colleagues, 'in obstructing as if he were really acting in the interests of the British legislators.' He was cool, calm, businesslike, always kept to the point, and rarely became aggressive in voice or manner. Sometimes he would give way with excellent grace and with a show of conceding much to his opponents, but he never abandoned his main purpose, never relinquished his determination to harass and punish the 'enemy.' The very quietness of his demeanour, the orderliness with which he carried out a policy of disorder served only to exasperate, and even to enrage, his antagonists." (*Barry O'Brien*, vol. i, p. 107.)

by him for lightening the rigour of military punishment and discipline. Parnell and his friends repeatedly appealed to these facts as proofs that the charge of obstruction made against them was not well founded. On one occasion a motion by the Government for more time for Government business led to a protracted debate, in the course of which one of the obstructors, with true Irish wit, maintained that it was the Government who were wasting the time of the House by bad leadership, and that their incompetence was the cause of their continually having to make fresh claims on the patience of the House: *Gracchi de seditione quærentes!*

The first campaign lasted from the 14th of February to the middle of April. Parnell's tactics were not as yet obstructive in the proper sense of the word, *i.e.*, they did not rest merely upon a more or less mechanical use of the forms of parliamentary procedure, but attempted to hide their true character under a veil of relevance. In the meantime, Parnell took the opportunity of justifying himself, as against the reproaches of his official party leader, in a correspondence with Butt which was shortly afterwards made public.[1] Butt had written that Parnell was alienating English sympathy with Ireland, and that it was a duty, based upon grounds of prudence as well as upon considerations of self-respect, incumbent on every member of an assembly not to degrade it by his own behaviour, especially if that assembly were the most august parliament in the world. Parnell replied that he looked at his duties towards the House of Commons in another light. "If Englishmen insist," he wrote, in characteristic words, "on the artificial maintenance of an antiquated institution, which can only perform a portion of its functions by the 'connivance' of those intrusted with its working in the imperfect and defective performance of much of even that portion—if the continued working of this institution is constantly attended with much wrong and hardship to my country, as frequently it has been the source of gross cruelty and tyranny—I cannot consider it is my duty to connive in the imperfect performance of these functions, while I should

[1] *Barry O'Brien*, vol. i., pp. 112 *sqq.*

certainly not think of obstructing any useful, solid, or well-performed work." The haughty self-confidence with which Parnell thus defended his cause is characteristic of his manner of fighting.

In the second half of the session Parnell took up obstruction proper. The climax was reached on the 2nd of July during the discussion of the estimates in Committee of Supply. Parnell with his little band by alternate motions "that the Chairman do now leave the chair" and "to report progress" kept the House in perpetual check from two in the afternoon till seven in the morning, when the Government gave in and assented to the close of the sitting. In the next sittings, too, there were frequent collisions between the Parnellites and the rest of the House. On the 25th of July, in the course of a debate on the great bill for confederation of the South African colonies, a Conservative member reproached the Irish group with obstruction; thereupon Parnell made a violent speech, in the course of which he raised the House to a high pitch of excitement by declaring, "I feel a special satisfaction in preventing and thwarting the intentions of the Government." On the strength of these words Sir Stafford Northcote, the Chancellor of the Exchequer, moved that Parnell should be suspended for the remainder of the sitting. The motion, however, was not carried.

On this occasion the Speaker (Mr. Brand) gave a ruling the full seriousness of which was not realised until a few years later. He said: "The House is perfectly well aware that any member wilfully and persistently obstructing public business without just and reasonable cause is guilty of a contempt of this House, and is liable to punishment whether by censure, by suspension from the service of this House, or by commitment according to the judgment of the House."[1]

The Government were no less alive to the necessity for serious measures. On the 27th of July the Leader of the House laid before it the two following proposals:—

That when a member, after being twice declared out of order, shall be pronounced by Mr. Speaker, or by the Chairman of Committees, as the case may be, to be disregarding the authority of the chair, the debate shall

[1] *Hansard* (235), 1814.

be at once suspended, and on a motion being made in the House, that the member be not heard during the remainder of the debate or during the sitting of the committee such motion, after the member complained of has been heard in explanation, shall be put without further debate.

That in committee of the whole House no member have power to move more than once during the debate on the same question that the Chairman do report progress or that the Chairman do leave the chair nor to speak more than once to such motion. and that no member who has made one of those motions have power to make the other on the same question.

The House, by overwhelming majorities, accepted both as standing orders. Parnell made no attempt to prevent their passing.[1]

The events of the 31st of July showed how little had been gained by these measures against obstruction. The South Africa bill was again before the House and the Government wished to bring the committee stage to an end at this sitting. At five in the afternoon O'Donnell began a course of obstruction proper by moving, with Parnell's support, "to report progress." Then followed no less than thirteen formal motions for adjournment, proposed by Parnell and his faithful few and advocated in long speeches. The numbers of the minorities upon the divisions never rose above five. In spite of an appeal from Butt himself to his countrymen the struggle went on all night. The handful round Parnell stood firm, but so did the Government. Finally at two in the afternoon Parnell gave way and the bill was

[1] The minority consisted of seven only. See *Annual Register*, 1877, pp. 45-48; *Hansard* (236), 25-82. During the debate the Leader of the House, Sir Stafford Northcote made the noteworthy observation: "It has been the distinguishing characteristic of this assembly that it has been able for so many years, I may say centuries, to conduct business of unparalleled importance and enormous extent with fewer limitations of the rights of minorities than exist in any other assembly in the world" And yet new rules were required. It should always be borne in mind that the House was a living assembly and not a body tied and bound by its rules, which it made for itself. *Quid leges sine moribus vanæ proficiunt?* In opposition it was urged that the 12 o'clock rule which the Government had introduced was a main source of the delay of business; it was from this that the method of "blocking" had sprung, the strangling of useful discussion of bills from motives of party antagonism. Parnell availed himself of this argument and replied not without humour to the reproaches of obstruction levelled at him for his proceedings upon the Mutiny Bill: It seemed to be the case that if by chance an Irishman took any interest in improving English laws there was an immediate cry of "Obstruction."

passed through committee and by the House. The sitting had lasted twenty hours and fifty minutes.

It was only the close of the session, which followed a few days later, that put an end to further attempts at obstruction. The excitement of all sections of politicians in England over the constraint exercised by Parnell on Parliament may easily be imagined, and it was clearly reflected in the organs of public opinion. *The Times* made the striking remark that Parnell had placed the British Parliament in a state of siege. Thus it was but natural that at the beginning of the next session the Government should come forward with a motion for the appointment of a select committee to consider a fundamental reform of the rules.[1] It is a mark of the impartiality which even in times of severe conflict prevails in the House of Commons that Parnell was chosen as one of the members of the committee. When one reads the shorthand minutes of the proceedings and observes the thoroughness with which the inventor of obstruction enters into the examination of the experts and the trouble he takes to prove the uselessness of the changes that were proposed and to controvert the idea that there had been any obstruction during the preceding sessions, it is hard to suppress a smile. As if Parnell cared in earnest for the improvement of the rules of the Imperial Parliament!

It is only necessary here to refer to the proceedings of the committee and their results so far as they were devoted to the struggle against obstruction, the other questions which were laid before them having already been discussed in a previous chapter. From the evidence of the Speaker and the Chairman of Committees, Mr. H. C. Raikes, we obtain an interesting picture of the position in the House brought about by the beginnings of Irish obstruction.

[1] The speech in which the Conservative Leader of the House supported his motion shows how strong, even at that time, was the feeling of leading men against any radical change in the rules. "I think it is most essential that, even if we have occasionally to suffer inconvenience, we should observe, and observe very strictly, those great principles which have been handed down to us by our forefathers. . . I am not making the proposals with a view of meeting what is called 'wilful obstruction.' I have no such idea, and if at any time we have to deal with such a thing, we must deal with it on different principles and different grounds." (*Hansard*, 24th January 1878, (237), 380–382.)

There could be no doubt that obstruction, possibly of a not very obvious type, had lasted through the whole of the session, and that this constituted an entirely novel parliamentary phenomenon.[1] Parnell's zealous exertions during the proceedings of the committee to represent his conduct merely as stubborn opposition could deceive nobody. Even the Irish member Mr. O'Shaughnessy, called as a "witness for the defence," admitted in cross-examination that on several occasions obstruction had been consciously practised by the Irish. Though Parnell in the course of the committee's proceedings was able to get an admission that obstruction was not capable of clear legal definition, the description of its characteristics given by Mr. Raikes was very much to the point. Obstruction, he said, included the raising of frivolous objections, constant repetition of the same arguments, and obvious efforts to spin out debate unduly by the introduction of side issues: added to these was the entering into minute details, especially in supply, a procedure which was bound to delay the progress of business by apparently relevant discussion and which could not strictly be treated as "wilful obstruction."[3] It would always be possible and easy, the Speaker considered, for a chairman to distinguish between fair opposition, however sharp and stubborn, and wilful obstruction.[4] Mr. Brand maintained that the distinctive mark of obstruction lay in the indiscriminating and incessant resistance of an extremely small minority to proposals of the most diverse kinds. To the objection that it was nothing new for opposition to be shown to one measure for the purpose of delaying another, Mr. Brand replied that this was at best a parliamentary trick which had unfortunately been carried on in late years.

Neither the Speaker nor the Chairman was afraid of going to the heart of the question. It had been conclusively proved that there was a small minority in permanent

[1] Report (1878), Minutes of Evidence, Qq. 1399–1405. The Speaker said plainly, "Obstruction is an offence new in the annals of Parliament" Q. 1356.

[2] *Ibid.*, Qq. 1568–1589.

[3] *Ibid.*, Qq. 1100, 1192, 1279–1287.

[4] *Ibid.*, Qq. 1406–1410.

opposition acting with the single object of damaging the parliamentary system of government, and that by obstruction. Opposition conducted under such conditions could not be directed to the legitimate end of eventually bringing those who engaged in it into the position of a Government or indeed to any positive end, so far as the House was concerned. Mr. Brand, therefore, defined obstruction precisely as the abuse of the privilege of the freedom of debate for the purpose of defeating the will of Parliament.

The Speaker left the committee in no doubt that existing parliamentary rules gave no sufficient protection against this mischief. Referring to his declaration that obstruction might be punished as a "contempt" under the traditional procedure, he repeated his statement, but pointed out that under present circumstances the remedy it indicated was entirely inadequate. For in each case of the kind recourse would have to be had to a complicated system of machinery, namely, the bringing forward of a substantive motion for the suspension of the offending member, on which debate and amendments would be in order. This would only be giving fresh material for obstruction.[1] New expedients were indispensable.

Two draft resolutions were laid before the committee as alternatives; one gave the Speaker and the Chairman unconditional authority to silence a member after repeated calls to order; the other required a division of the House. The Speaker considered either acceptable, provided only, in the latter case, that debate and amendment were forbidden. To all fears which were expressed in Radical quarters, Mr. Brand opposed his conviction that no Speaker would ever enforce such a standing order unless he knew that he had behind him the whole House, or at all events an overwhelming majority. For this reason he considered a division superfluous. This new power ought to be at the disposal of the Chairman as well as of the Speaker. Mr. Brand wished further that the standing order should be expressly extended

[1] In this very session (1878) occurred the leading case on the application of the ancient parliamentary discipline, that of the Irish member Major O'Gorman.

to the case of "misuse of the forms of the House." The Speaker ought in each particular instance to have the unfettered right of deciding whether obstruction was taking place or not.[1]

As a punishment the Speaker suggested suspension for the remainder of the sitting, whether the disorderly conduct had taken place in committee or before the House itself. He remarked significantly that no doubt the existing rights of minorities would be curtailed by such a rule, or by any rule aimed at hindering obstruction. Further he referred to the similar regulations in the rules of the French and Italian chambers.[2]

The Chairman of Committees, in the evidence which he gave, differed from the Speaker's opinion on certain essential points. He attached great importance to the new rights of punishment being exercised not by the Chair but by the House or committee itself (Q. 1048). He considered that the initiative, too, should be thrown not on the Chair but on a member; otherwise, he dreaded, an antagonism might spring up between the Chair and members, which up to that time, fortunately, had been non-existent. Moreover, his method of formulating the new rule would carry out the old principle that the Speaker possessed no authority except such as had been delegated to him by the House.

The select committee reported on the 8th July, making

[1] Report (1878), Minutes of Evidence, Qq. 1358–1366. Mr. Brand was perfectly justified in repelling all the considerations urged against this. It was, he said, quite inconceivable to imagine any misuse of this power by the Speaker; definitions of obstruction were impossible and unfruitful; the Speaker would be best able to distinguish between fair opposition and obstruction by his instinctive feeling; besides, any misuse of this right that might occur could be corrected by a simple decision of the House. Qq. 1430–1453.

[2] Report (1878), Minutes of Evidence, Qq. 1526–1531. Article 118 of the French orders as to business, says: "Lorsqu'un orateur a été rappelé deux fois à l'ordre dans la même séance, l'Assemblée peut, sur la proposition du Président, lui interdire la parole pour le reste de la séance." The corresponding Italian regulation runs: "Se il Presidente ha richiamato due volte alla questione un oratore che seguita a dilungarsene, può interdirgli la parola pel resto della seduta in quella discussione; se l'oratore non si accheta al giudizio del Presidente, la Camera, senza discussione, decide."

as the result of their deliberations, the following proposals for a new standing order levelled against obstruction :—

(*a*) That in committee of the whole House no member have power to move more than once, during the debate on the same question, either that the Chairman do report progress or that the Chairman do leave the chair, nor to speak more than once to each separate motion, and that no member who has made one of these motions shall have power to make the other on the same question.

(*b*) That whenever any member shall have been named by the Speaker or by the Chairman of a committee of the whole House, as disregarding the authority of the Chair by persistently and wilfully obstructing the business of the House or otherwise, the Speaker or Chairman may, after the member named shall, if he desire it, have been heard in explanation for a period of time not exceeding ten minutes, put the question, no amendment or debate being allowed, "That such member be suspended from the service of the House during the remainder of that day's sitting."

(*c*) That when a motion for the adjournment of the House or of a debate, or for reporting progress in committee, or for the Chairman's leaving the chair, has been defeated by a majority of not less than two to one, and has been supported by a minority of less than twenty members, then if while the same main question is still before the House or the committee (as the case may be), another motion should be made for adjournment or for reporting progress, or for the Chairman's leaving the chair, Mr. Speaker or the Chairman (as the case may be) may, if he think fit, instead of directing the "Ayes" to go into one lobby, and the "Noes" into the other, call upon the "Ayes" to rise in their places, and if the number of the "Ayes" shall then appear to be less than twenty, and if it also appear to Mr. Speaker or the Chairman (as the case may be), that the "Noes" exceed forty, the division shall not take place, and the motion shall be declared to have been lost.

The energetic desire for reform shown in these proposals did not prove long lived. At the beginning of the session of 1879 the Government decided to propose six resolutions to the House, only one of which was in the end passed; this was the above-quoted rule of progress concerning the discussion of the estimates in Committee of Supply.[1] It was not until the beginning of the following session that the Government were induced to take a step in the direction of tightening parliamentary discipline. On several occasions in the House of Commons during the session of 1879, and also at meetings during the interval between that session and the next, expression had been given to the fear that the House of Commons might be discredited by allowing obstruction to have its own way.[2] At the beginning of the session

[1] See the previous chapter, p. 84.

[2] *Annual Register*, 1880, pp. 19, 22 and 23.

Mr. Newdegate, a member who had always taken a great interest in procedure, gave notice of his intention to bring in a motion increasing the power of the Speaker to punish obstructionists: his action compelled Sir Stafford Northcote, on behalf of the Government, to take up the question. On the 26th of February he brought in a proposal drawn up on the lines of resolution (*b*) of the 1878 Committee, above quoted.

Besides receiving certain trifling alterations that resolution now gained considerably in severity and range. It was proposed that when a member had been suspended three times in one session, his third suspension should last for a week at least and in addition for such period as the House should, on motion, decide.[1] For the rest a cardinal feature of the new standing order was that it threw upon the Speaker or Chairman as the case might be the responsibility of deciding what was in any particular case to be regarded as systematic obstruction and refusal to obey the Chair. The devising of a short and sharp procedure for the conviction and punishment of a member "named" by the Speaker, by means of a division of the House, was a further

[1] The text of this standing order runs as follows:—"That whenever any member shall have been named by the Speaker, or by the Chairman of a committee of the whole House, as disregarding the authority of the chair, or abusing the rules of the House by persistently and wilfully obstructing the business of the House, or otherwise, then if the offence has been committed in the House the Speaker shall forthwith put the question on a motion being made, no amendment, adjournment or debate being allowed 'that such member be suspended from the service of the House during the remainder of that day's sitting,' and if the offence has been committed in a committee of the whole House, the Chairman shall, on a motion being made, put the same question in a similar way, and, if the motion is carried, shall forthwith suspend the proceedings of the committee and report the circumstance to the House, and the Speaker shall thereupon put the same question, without amendment, adjournment or debate, as if the offence had been committed in the House itself. If any member be suspended three times in one session, under this order, his suspension on the third occasion shall continue for one week and until a motion has been made, upon which it shall be decided, at one sitting, by the House, whether the suspension shall then cease, or for what longer period it shall continue; and, on the occasion of such motion, the member may, if he desires it, be heard in his place: Provided always, that nothing in this resolution shall be taken to deprive the House of the power of proceeding against any member according to ancient usages." See now Standing Order 18.

step in advance. The discussion of this reform proved very lengthy; it lasted from the 26th to the 28th of February 1880, but the resolution was finally adopted by an overwhelming majority.

In other respects the sessions of 1879 and 1880 passed over peacefully. The Irish had other matters on hand—the carrying on of their agitation in Ireland and the Irish quarters of the large towns in England; Parnell's journey to America; the organisation and working of the new Land League; and the preparations for the general election which took place in 1880. These things absorbed the attention of the Home Rule party, the majority of which, on the 1st of September 1878, had deposed Mr. Butt from his leadership and elected Mr. Parnell in his place. In the new parliament, out of 105 Irish members 60 were Home Rulers. When it met on the 29th of April 1880 there was a new ministry: Mr. Disraeli, now Lord Beaconsfield, had resigned, and Mr. Gladstone had, for the second time, taken up the conduct of affairs.

The first session of the new Cabinet was, so far as our subject is concerned, without results. The Liberal Government were trying to meet the Irish with a new Land bill, which, at all events at first, received Parnell's support; there was, therefore, no question of systematic obstruction. The rejection of the Land bill by the Lords, and the peaceful acceptance by the Government of the defeat of their policy, led to renewed agitation by the Land League, followed by serious disturbances and a general excitement of the masses in Ireland.[1] The Government opened the session of 1881 with the determination once more to impose exceptional legislation on Ireland. Their decision found Parnell ready to fight again with the weapons of parliamentary obstruction.

[1] It was at this time that, on the estate of Captain Boycott, there was organised and practised for the first time that form of social obstruction which has since passed under the name of this early victim of the Land League. Parnell was the inventor of boycotting as well as of obstruction. In a speech at Ennis on the 19th of September 1880 he had, in inflammatory and stirring language, explained the plan to a mass meeting of peasantry and advised its adoption. Barry O'Brien gives a dramatic description of this occurrence, vol. i, p. 237. See also *Davitt*, "Fall of Feudalism," pp. 266–285.

The debate on the address in the House of Commons began on the 6th of January 1881. Irish opposition was roused by the announcement of the Coercion bill, and the debate was continued on the 7th, 10th, 11th, 12th, 13th, 14th, 17th, 18th, and 19th of January, and was only closed on the 20th, after having taken up eleven whole sittings. In the course of the intolerably protracted discussion repeated threats had been directed by English members against the obstructionists, and it is instructive, as showing the state of public opinion, that in the House of Lords the Government were openly asked to meet this unprecedented obstruction by a measure of constitutional despotism.

Lord Redesdale, on the 17th of January, recommended the Cabinet to declare the state of Ireland to be one of revolution, to introduce a bill for the suspension of the Habeas Corpus Act in both Houses at the same time, and as soon as the first reading had taken place, to act as if the bill had passed. He said the Government could rely in advance upon a bill of indemnity to absolve them from the consequences of such unconstitutional procedure. The reasoning by which the Lord Chancellor (Lord Selborne) supported his rejection of such heroic measures is a characteristic specimen of the deep-rooted constitutional sense which distinguishes the English nation. He pointed out that the suggested procedure would be simply illegal, and that if anything could seem to justify obstruction, it would be the announcement by the Government that they intended to be guilty of such conduct. There might be cases of state necessity in which the executive would be justified in superseding the ordinary course of law, and trusting to a vote of indemnity ratifying what had been done; but it was impossible even to think of treating the suspension of the Habeas Corpus Act in this way. The Habeas Corpus Act was passed for the express purpose of enabling application to the courts of law to be made by any man deprived of his liberty without legal warrant. If the Government were to act as suggested they would be involved in a contest not only with obstruction, but with every court of law.[1]

[1] *Annual Register* (1881), p. 26; *Hansard* (257), 824–827.

The Government, therefore, refused to entertain Lord Redesdale's plan and took other measures. On the 24th of January the Irish Secretary requested leave to bring in a bill for the protection of person and property in Ireland. The debate on this motion was begun and adjourned. At the next sitting Mr. Gladstone opened the proceedings by a motion to suspend the standing orders, and to give the discussion of the Irish Coercion bill priority to all other business: to this unusual procedure the Irish offered violent obstructive resistance. The sitting lasted twenty-two hours; not until two in the afternoon of the 26th was it possible to obtain a division, which resulted in the acceptance of the motion by 251 votes to 33.[1] On the following day, the 27th, an indiscretion had disclosed the contents of the bill, and raised the excitement and anger of the Irish to the highest pitch. What seemed scarcely imaginable took place —an increase in obstruction. The sitting which began at 4 o'clock on Monday the 31st of January, was to witness a display exceeding all that had gone before; it lasted no less than forty-one and a half hours, *i.e.*, till 9.30 on Wednesday morning. The climax had been reached: it brought about the crisis in the regulation of business. The debate was closed by the celebrated *coup d'état* of the Speaker.

Now that the fateful phenomenon of obstruction has become familiar in most of the parliaments of Europe and America, any description of the details of this first historic struggle against it has lost much of its interest. For the present purpose the essential points are those connected with the handling of the rules and the memorable action of the Speaker. As to these we must go into further details.

At the beginning of the sitting Parnell, confident of victory, had declared that, even if the Government kept the House together for the whole night and the following day and the night after that, they would not have made a step in advance.

[1] At midnight Parnell asked the Government to postpone the further discussion of the Coercion bill till the next sitting but one (Thursday). On this condition he was willing to consent to the division on the motion to suspend the standing orders being taken at once. Mr. Gladstone would not accept this compromise. After the sitting had lasted a further twelve hours the Government acquiesced. The Irish, therefore, on this occasion, came off victorious. See the report, *Hansard* (257), 1314–1487.

The Times had once said of Parnell as a parliamentary leader that it was easy for him to prophesy, as he had in his own hands the power to carry out his predictions. On this occasion he clearly foresaw the length of the sitting, but he was mistaken as to its result. He overlooked the fact that the Government, and both English parties, must now in self-defence break the power of obstruction. It had become clear to the Liberal party, with the possible exception of the Radical wing, as much as to the Conservatives, that submission to the success of Parnell's tactics had become both to Parliament and the whole nation not only an indignity but a really serious danger. In the year 1879 both parties, as we saw, were unwilling to make any essential changes in the rules of business. In spite of the experiences of the first obstruction campaign nearly everything had been left *in statu quo*. For Parnell and his style of fighting had been looked upon as a passing phenomenon. But the first weeks of the new session had clearly shown the great dangers of obstruction: it was recognised that Parnell and his friends were sincerely possessed by the naively defiant idea that they could wring constitutional independence for Ireland from the majority by misuse of the rules. The energy and seriousness with which Parnell strove to realise this absurd plan shook the parties and their leaders out of their sleep. Their eyes were opened, and they saw obstruction in its true character as parliamentary anarchy, a revolutionary struggle, with barricades of speeches on every highway and byway to the parliamentary market, hindering the free traffic which is indispensable for the conduct of business. It was no longer argument against argument, but force against force.[1] In such a situation even a much less combative nation than the English would have felt that it had no choice but to oppose to the defiance of the weaker the strength of the majority, which, too, in this case, represented a nation accustomed to conquer and command. Nay, it had become abundantly

[1] "It is the first conditions of parliamentary existence, for which we are now struggling," said Mr. Gladstone in his great speech; "the House of Commons has never since the first day of its desperate struggle for existence stood in a more serious crisis—a crisis of character and honour, not of external security." (*Hansard* (258), 88–102.)

clear that the fundamental principle of British parliamentary government was now at stake, the principle on which its historic framework rested, that of government by the majority. Finally, the assembly whose efficiency was the object of attack was not the parliament of one of the mock constitutional countries of the Continent, created as an ornament to the supremacy of the crown, the bureaucracy and the army, with powers of advice and a convenient share in responsibility; what was now endangered was the dignity, the very existence of a body from which proceeded all the political authority of the government of a world-empire, in the orderly discussions of which the administration of a great state found its supreme control and direction.[1] It was, of course, perfectly clear that as soon as the British parties and their leaders made up their minds to take Parnell and his obstruction seriously the outcome could not remain an instant in doubt. Yet for once the Irish leader's clearness of vision seems to have failed him; he and his party were taken by surprise, and for the moment stupefied, by the events that now overtook them.

British public opinion had come to recognise the need for beating down obstruction earlier than the parliamentary parties and their leaders. Only on the ninth day of the debate on the address had the Cabinet decided in council to deal with the question of obstruction; even then they took action with cautious hesitation. Both country and Government saw that the introduction of the closure or some corresponding procedure was a measure of the utmost urgency, but stoppage of debate could only be brought about by means of a formal breach in the rules, and the question of how it was to be introduced divided the Cabinet for a long time. It was true that the Conservative party under Sir Stafford

[1] There is a striking passage in a speech of Mr. Gladstone's on the 3rd of February 1881: "There is no other country in the world in which for two or three centuries a parliament has laboured steadily from year to year, in the face of overweening power, to build up by slow degrees a fabric of defence against that overweening power for the purpose of maintaining and handing down intact that most precious rule of liberty of speech . . . Other assemblies have duties that are important, indeed, but they are trifles light as air in comparison with the duties of the British House of Commons." (*Hansard* (258), 89.)

Northcote had long been ready to support the Government in principle against obstruction. The great newspapers, *The Times* and *The Standard* at their head, were more and more eagerly pleading for the closure and pointing it out as an institution long established in foreign parliaments. But in the councils of the Conservative party the first plans were different from those of the Government. Mr. Gladstone wished above all things to cast the responsibility for any extraordinary measures that might be necessary upon the majority of the House. Sir Stafford Northcote and the front Opposition bench desired, on the other hand, to give the Speaker full discretionary power, and besides, they were anxious that such disciplinary powers as the rules already provided should be utilised to their full extent.

This difference of opinion showed itself clearly in the course of the forty-one hour sitting. Sir Stafford Northcote, Mr. Cross, and the other Conservative leaders made repeated public appeals to the Speaker and the Government to put an end to the proceedings of the Irish by applying the new standing order against obstruction.[1] The Speaker and the Government held back and refused. In the end, relief came from the quarter whence in the nature of things it might have been expected. Now that parliamentary anarchy had become open, it was only the supreme guardian of order in the House, the Speaker, who could lay claim to moral authority adequate to the inevitable act of dictatorship. By a fortunate dispensation, on this occasion, as on many another in English history, at the critical moment the right man was in the right place. In the person of the Speaker, Mr. Brand, were united in the happiest combination the highest qualities of counsel and action, the perfection of wise reserve and unshakable firmness. Long proved as a chairman of equal impartiality and energy, he embodied the great tradition which had raised his office on high for generations. In the prime of life and standing on the solid ground of long-established parliamentary authority, he had soon arrived at the clear conviction that obstruction must now be overthrown at any cost, and, further, that it

[1] *Hansard* (257), 1942, 1950.

was no longer possible to postpone a radical reform in parliamentary procedure. It was no small thing that he undertook. It was not only that there was a certainty of breaking the letter of the rules; it was also necessary to provide for the introduction of a far-reaching reform, which should meet the exigency of the situation, and be at the same time of permanent application. It was no doubt true that, in the actual circumstances, the spirit of parliamentary government, from which every system of rules must draw its inner strength, would be better expressed by the exercise of the closure than by permitting systematic misuse of the traditional forms of business; or at all events that it would be better protected in this way; but, on the other hand, it was equally plain that a dictatorial course of action would in itself constitute a weighty precedent.

With the perspicuity of a man who after long and patient waiting has decided upon action, Mr. Brand ignored all merely technical considerations and resolved that he would put an end to the portentous debate on his own authority. It is in the highest degree interesting to learn the course of events from his own diary. He writes:—

"*Monday, January 31st.*—The House was boiling over with indignation at the apparent triumph of obstruction, and Mr. Gladstone, yielding to the pressure of his friends, committed himself, unwisely as I thought, to a continuous sitting on this day, in order to force the bill through its first stage. On Tuesday, after a sitting of twenty-four hours, I saw plainly that this attempt to carry the bill by continuous sitting would fail, the Parnell party being strong in numbers, discipline and organisation, and with great gifts of speech. I reflected on the situation, and came to the conclusion that it was my duty to extricate the House from the difficulty by closing the debate of my own authority, and so asserting the undoubted will of the House against a rebellious minority. I sent for Mr. Gladstone on Tuesday (February 1st) about noon and told him I should be prepared to put the question in spite of obstruction on the following conditions:—(1) That the debate should be carried on until the following morning, my object in this delay being to mark distinctly to the outside world the extreme gravity of the situation and the necessity

of the step which I was about to take. (2) That he should reconsider the regulation of business, either by giving more authority to the House, or by conferring authority on the Speaker.

"He agreed to these conditions, and summoned a meeting of the Cabinet, which assembled in my library at 4 p.m. on Tuesday, while the House was sitting, and I was in the chair. At that meeting the resolution as to business assumed the shape in which it finally appeared on the following Thursday, it having been previously considered at former meetings of the Cabinet. I arranged with Playfair to take the Chair on Tuesday night about midnight, engaging to resume it on Wednesday morning at nine. Accordingly, at nine, I took the chair, Biggar being in possession of the House. I rose and he resumed his seat. I proceeded with my address, as concerted with May, and when I had concluded I put the question. The scene was most dramatic; but all passed off without disturbance, the Irish party on the second division retiring under protest.

"I had communicated, with Mr. Gladstone's approval, my intention to close the debate to Northcote, but to no one else, except May, from whom I received much assistance. Northcote was startled, but expressed no disapproval of the course proposed." [1]

The memorable address in which the Speaker gave his reasons for thus assuming the office of parliamentary dictator ran as follows:—

"The motion for leave to bring in the Protection of Person and Property (Ireland) Bill has now been under discussion for above five days. The present sitting, having commenced on Monday last at 4 o'clock, has continued until this Wednesday morning, a period of forty-one hours, the House having been frequently occupied with discussions upon repeated dilatory motions for adjournment. However prolonged and tedious these discussions, the motions have been supported by small minorities in opposition to the general sense of the House. A crisis has thus arisen which demands the

[1] Extract from the diary of the Speaker, Mr Brand (Viscount Hampden), quoted in *Morley's* "Life of Gladstone," vol. iii., p. 52.

prompt interposition of the Chair and of the House. The usual rules have proved powerless to ensure orderly and effective debate. An important measure, recommended in Her Majesty's speech nearly a month since, and declared to be urgent, in the interests of the state, by a decisive majority, is being arrested by the action of an inconsiderable minority, the members of which have resorted to those modes of obstruction which have been recognised by the House as a parliamentary offence. The dignity, the credit, and the authority of this House are seriously threatened, and it is necessary that they should be vindicated. Under the operation of the accustomed rules and methods of procedure the legislative powers of the House are paralysed. A new and exceptional course is imperatively demanded; and I am satisfied that I shall best carry out the will of the House and may rely upon its support if I decline to call upon any more members to speak, and at once proceed to put the question from the Chair. I feel assured that the House will be prepared to exercise all its powers in giving its effect to these proceedings. Future measures for ensuring orderly debate I must leave to the judgment of the House. But I may add that it will be necessary either for the House itself to assume more effectual control over its debates or to entrust greater authority to the Chair."[1]

Thus closed the first act in the great drama of Irish obstruction. But the most exciting scene—that of the inevitable protest of the Irish against the Speaker's "act of violence"—was yet to come.[2] They regarded Mr. Brand's action as sheer breach of privilege, and demanded the use of the urgent procedure which is prescribed for such a case. The Speaker ruled that there was no question of privilege, only one of order which must be brought forward by

[1] *Hansard* (257), 2032, 2033; *Annual Register*, 1881, pp. 46, 47.

[2] Both in Parliament and in the press, the Speaker's bold action called forth the warmest approval. "I never heard such loud and protracted cheering," said the Speaker, "none cheering more loudly than Gladstone." The Prime Minister wrote, on the day of the occurrence, in his customary daily report to the Queen: "The Speaker's firmness in mind, his suavity in manner, his unwearied patience, his incomparable temper, under a thousand provocations, have rendered possible a really important result.' (*Morley*, "Life of Gladstone," vol. iii., p. 53.)

motion after notice. The Irish succeeded by skilful tactics in dragging on the debate through the whole of the next sitting, which was held on the same day. On the following day the proceedings began with a question whether Mr. Michael Davitt, one of the members of the Home Rule party in Parliament, had been arrested. The Home Secretary said that this was the case, and thereupon Mr. Gladstone rose to explain the proposal, of which he had given notice, for a change in the rules. At the same moment Mr. Dillon, one of the Irish members, rose and attempted to speak. The Speaker called upon Mr. Gladstone, but Mr. Dillon did not give way, crying out for liberty of speech.

"A scene of unexampled confusion and excitement followed. Mr. Gladstone and Mr. Dillon were on their legs at the same time; but while the former gave way on the Speaker rising, Mr. Dillon still remained standing. There were loud cries of 'Name him,' while the Irish members cried 'Point of order,' and at last the Speaker, in the terms of the standing order, said, 'I name you, Mr. Dillon, as wilfully disregarding the authority of the Chair.' Mr. Gladstone thereupon moved that Mr. Dillon be suspended from the service of the House for the remainder of the sitting. . . . This was accepted, but Mr. Dillon declined to withdraw on the request of the Speaker. Upon this the Speaker directed the Serjeant-at-arms to remove him. The Serjeant, advancing to the bench where Mr. Dillon was seated, laid his hand on his shoulder, and when he still declined to move, beckoned towards the door. Immediately five messengers came in and made preparations for removing Mr. Dillon, but he avoided the employment of force by rising and walking out of the House."[1]

"When Mr. Gladstone attempted to resume his speech, he was interrupted immediately by the O'Donoghue moving the adjournment of the House. No notice was taken of his motion, and Mr. Parnell in an excited tone called out: 'I move that Mr. Gladstone be no longer heard.' There were loud cheers from the Irish members at this, and counter cries of 'Name him' as Mr. Parnell repeated the motion.

[1] *Annual Register*, 1881, p. 54.

The Speaker warned the hon. member that if he persisted he should have no option but to enforce the standing order. Mr. Gladstone was allowed to proceed for a few sentences, but Mr. Parnell rose and again called out, 'I insist on my right to move that Mr. Gladstone be no longer heard.' The Speaker then 'named' Mr. Parnell in the prescribed form, Mr. Gladstone moved that he be suspended, and the motion was carried by 405 to 7. Like Mr. Dillon, Mr. Parnell declined to withdraw till removed by superior force and the same ceremony was gone through."

During the division the Irish members remained in their seats and took no part in the voting—a course of action forbidden by the rules. Mr. Gladstone characterised this as an act of flagrant contempt and expressed the hope that the Speaker would find means to prevent its recurrence. Immediately after, one of the Irishmen interrupted the Prime Minister with the stereotyped motion "That Mr. Gladstone be no longer heard." He was suspended without delay, and once more the Irish members, twenty-eight in number, remained ostentatiously in their places. On the completion of the division the Speaker rose and pronounced this irregular proceeding of the Irishmen to be a disregard of the authority of the Chair. Thereupon Mr. Gladstone moved the suspension of the twenty-eight delinquents *en bloc*, and the motion was carried by 410 votes to 6. "Then followed a curious scene which lasted nearly half-an-hour. The Speaker read out the names of the twenty-eight members one by one in alphabetical order and directed them to withdraw. Each in turn refused to go unless compelled by superior force, and each was in turn removed by the Serjeant-at-arms, by direction of the Chair. Each made a little speech, and while some walked out when touched by the Serjeant, others refused to move until the messengers were brought in."[1]

In this way the House was freed from the obstructionists, Mr. Gladstone could speak in peace, and in a speech which was greatly admired he summarised the events which had just taken place, urging that no better argument could be

[1] *Annual Register*, 1881, pp. 55, 56.

brought forward to induce the House to adopt the procedure reforms which had been proposed.

We may now close our description of the parliamentary development of the obstruction struggle.

Irish obstruction was certainly not finally disposed of by the events that have been described; in a less turbulent form it lasted much longer, and its full strength was directed against both the new temporary standing orders and the great Irish Coercion bill.[1] But the danger which had seemed for a moment to threaten the very constitution was averted. The national will of the British people, embodied in the corporate will of the House, had shown itself able to repel the attacks of the Nationalist minority. However reasonable and practicable the objects of the Irish Nationalist party may have been—the next twenty years saw many of them attained—they were not to be won by open force, nor was it right that they should be. There can be no doubt that Mr. Parnell's tactics had, by the attention which they drew to his demands, one immediate result; they enforced the recognition of the unbearable economic and administrative circumstances of Ireland, and made their reform inevitable. It is a striking instance of the irony of fate that it was Mr. Gladstone, the leader in the battle in which obstruction was overthrown, who was the most affected by the irresistible influence of Ireland, and who was led further and further along the path of reform till he reached the acceptance of the principle of Home Rule. This unexpectedly large measure of success for the Irish cause was due chiefly to the united political organisation of the Irish, as framed by Parnell in the first instance. But it was not the naked force of obstruction which brought them their long and still unclosed series of achievements, it was the opening of the eyes of the victors in the obstruction struggle, the rapid and continuous growth in the comprehension by both British parties of the needs of Ireland. It may not be unbecoming

[1] *Annual Register*, 1881, p 73. After the Irish party had protracted the debate on the Coercion bill through several sittings, they began to avail themselves of the expedient of motions for adjournment on the score of unsatisfactory answers to questions; there were particularly severe conflicts on the 24th and 25th of May.

to point this out as the most important lesson taught by the first and greatest conflict with obstruction which the House of Commons has had to wage.

We may now return to the immediate consequences of the struggle; namely, the systematic reforms made in the regulation of business.

CHAPTER III

THE URGENCY PROCEDURE AND THE INTRODUCTION OF THE CLOSURE (1881–1888)

THE resolution brought in by Mr. Gladstone with the object of preventing further Irish obstruction upon the Coercion bill is one of the most remarkable documents in English parliamentary history. Its contents may be characterised in one word. It proclaimed a parliamentary state of siege and introduced a *dictatorship* into the House of Commons. The new rule, called for shortness the urgency rule, reads as follows :—

That, if upon notice given a motion be made by a minister of the Crown that the state of public business is urgent, upon which motion such minister shall declare in his place that any bill, motion, or other question then before the House is urgent, and that it is of importance to the public interest that the same should be proceeded with without delay, the Speaker shall forthwith put the question, no debate, amendment, or adjournment being allowed; and if, on the voices being given he shall without doubt perceive that the Noes have it, his decision shall not be challenged, but, if otherwise, a division may be forthwith taken, and if the question be resolved in the affirmative by a majority of not less than three to one, in a House of not less than 300 members, the powers of the House for the regulation of its business upon the several stages of bills, and upon motions and all other matters, shall be and remain with the Speaker, for the purpose of proceeding with such bill, motion, or other question, until the Speaker shall declare that the state of public business is no longer urgent, or until the House shall so determine, upon a motion which, after notice given, may be made by any member, put without amendment, adjournment or debate, and decided by a majority.[1]

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[1] See *Hansard* (258), 88–155. The speech with which Mr. Gladstone introduced his proposal is one of the great statesman's masterpieces. He described liberty of speech as a precious inheritance of Parliament, but as a right to be exercised according to the possibilities that must limit the condition and the action of a representative assembly. As to the possible objection that his proposal might lead to oppression of the minority, Mr. Gladstone said that there had been times when very small minorities in the House had represented the national feeling, but that those times had, he believed, passed away never to return, securities having been taken in the laws and institutions of the country which had rendered such a contingency impossible.

Sir Stafford Northcote and the Conservative party, whose loyal assistance

The Government, then, had made their choice between the two alternatives; it was not to be the majority of the House, the Government party, but the Speaker who was to exercise the dictatorship that had become necessary. No doubt the rule, by an addition which was only made during the course of the debate, placed it in the power of a simple majority, on the initiative of any member, to annul the state of urgency; and the necessity for the presence of 300 members was a safeguard against such a dictatorship being used against the regular British opposition; the clause was, almost avowedly, aimed simply and solely at putting down the Irish rebels. In other respects the Speaker was given a perfectly free hand. During the time of parliamentary urgency the whole of the regular order of business was suspended, and in its place the Speaker was to lay down whatever rules he considered necessary for the speedy despatch of business. On the 4th of February, the day after the passing of the resolution, the Speaker addressed the House. After a dignified reference to his sense of the grave responsibility laid upon him, he promulgated the first of the new rules which he was now authorised to frame, with the remark that in a few days the other rules would be laid before the House. The rule was in the following terms:—

> That no motion for the adjournment of the House shall be made except by leave of the House, before the orders of the day or notices of motion have been entered upon.[1]

On the 9th of February the Speaker laid upon the table the further rules which he had drawn up, to the number of sixteen.[2] Their contents may be shortly summarised: They enable the Speaker to refuse any dilatory motion for adjournment during a debate; they confine each member during any debate to one speech on a motion for adjournment:

Mr. Gladstone acknowledged in almost enthusiastic terms, requested certain alterations in the motion as originally set down: most of them were accepted by the Government. The protracted debate showed that practically the whole House, with the exception of the Nationalists, supported the Government and the Speaker. Only one English member, the Radical Mr. J. Cowen, spoke against any exceptional measures.

[1] *Hansard* (258), 162.

[2] *Hansard* (258), 435–438. For the full text see Appendix.

they give the Speaker power, on the ground of irrelevance or tedious repetition, to direct a member to discontinue his speech ; the House was to resolve itself into committee (and *vice versâ*) without debate. Two of the rules are especially important.

1. (No. 9.) On a division being demanded the Speaker may call upon the members asking for it to rise in their places, and if they do not exceed twenty a division need not be taken.

2. (No. 6.) The closure is introduced. The proposal is to come from the Speaker, but it must be accepted by a majority of three to one if it is to become effective.

Most of these rules — not, however, the closure rule — were to apply in committee as well as in the House ; and members were not to be allowed to speak twice in committee on the same question.

In spite of these provisions, as experienced parliamentarians had prophesied, the Coercion bill was obstructed with as much success as ever : the Speaker found himself forced, after five sittings of the committee on the bill, to lay down certain additional rules. They were three in number and ran as follows :—

1. That on a motion being made, after notice, that the chairman of a committee upon any bill declared urgent, do report the same to the House, on or before a certain day and hour; or that the consideration of any such bill, as amended, be concluded, on or before a certain day and hour; the question thereupon shall be forthwith put from the chair, but shall not be decided in the affirmative, unless voted by a majority of three to one.

2. That when the House has ordered that the consideration of a bill, as amended, be concluded on or before a certain day and hour, the several new clauses and amendments shall be put forthwith, after the member who has moved any new clause or amendment and a member in charge of the bill has been once heard; or if a member in charge of the bill has himself moved a new clause or amendment, after one other member has been once heard thereupon

3 That when the House has ordered that the chairman of a committee on a bill do report the same on or before a certain day and hour, the several amendments and new clauses, not yet disposed of, shall be put forthwith, after the member who has moved any amendment or new clause, and a member in charge of the bill has been once heard : or if a member in charge of the bill has himself moved an amendment or new clause, after one other member has been once heard thereupon; and if the proceedings of the committee have not been

concluded at the appointed hour, the chairman shall leave the chair, and report the bill to the House.[1]

Here we have not only the closure in the strictest conceivable form, but further, an introduction into the rules of procedure of an entirely new principle, which, in a somewhat altered shape, has outlasted the provisional rules of 1881. The device of a fixed interval, within which the discussion of a bill must be brought to an end, received at a later date the appropriate name of the parliamentary *guillotine*. It will shortly be explained in what form an institution so abhorrent to the traditions of the House of Commons became permanent.

Notwithstanding the severity of the dictatorial procedure, considerable difficulties at once presented themselves in its practical application. Three further sittings and the application of the whole strength of the Government and its supporters were required before the Protection of Person and Property (Ireland) bill was finally forced through the House. It was read a third time on the 25th of February by a majority of 281 votes to 36.[2]

Even yet the state of urgency had not come to an end. It was proposed and carried that the same exceptional treatment should be applied to the second special measure concerning Ireland, the Arms bill. Not till the passage of this, on the 21st of March, did the dictatorship over the House of Commons expire.[3]

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[1] For the text see *Hansard* (258), 1070, 1071: see also *Annual Register*, 1881, pp. 60 *sqq.* On the 21st of February on the motion of Mr. Gladstone, the end of the sitting was fixed as the limit of the discussion of the Coercion bill in committee. (*Hansard* (258), 1393.)

[2] This novel stringency in procedure received very little welcome either in Parliament or in the press. During the course of the discussion the Radical member, Mr. J. Cowen, satirised the whole of the proceedings by giving notice of his intention to move that whenever the Government declared a bill to be urgent it should be put to the House without any discussion whatever. The newspapers, not without some justification, found in these rules a confession of the complete breakdown of the system of government. *The Times*, however, very fairly pointed to the continuance of obstruction, and argued that it could only be rendered harmless by the adoption of the severest measures.

[3] Strangely enough the estimates had, in the meantime, been discussed without being made a matter of urgency, a course of action which gave rise to no little controversy (*Annual Register*, 1881, p. 67). The session lasted till beyond the middle of August, having been one of the severest

The immediate object which the Government and the House had set before themselves had been attained; but it had become clear to everybody that the exceptional state of affairs could not last, and that a careful and comprehensive reform of the rules had become necessary. At the very beginning of the next session (1882) Mr. Gladstone laid before the House the draft of a series of resolutions on procedure which together made up a consistent system. But, although no less than six sittings during the course of the session were devoted to the discussion of the scheme, it was not possible to obtain the sanction of the House even to the first of the fifteen proposed rules. This is hardly a matter to cause surprise, for the very first motion contained the most far-reaching and significant alteration in the order of business, namely, the introduction of the closure as a permanent institution. There were the greatest differences of opinion, especially on the Liberal side, as to whether it was necessary or advisable to go so far; the proposal, that a simple majority should be allowed to insist on termination of a debate especially called forth the sharpest opposition from the Radical wing of the supporters of the Government.

Mr. Gladstone's motion would have entrusted the initiative and application of the closure entirely to the discretion of the Speaker or Chairman.[1] The only limitation imposed was that the motion for termination

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trials of endurance that the House of Commons had ever undergone. No less than 154 sittings were held, with a total duration of 1,400 hours: only three sessions of Parliament since the Reform bill had been longer. The Coercion bill had taken up twenty-two sittings, half of them before the *coup d'état*. The great Irish Land Act of this year required fifty-eight sittings. The number of speeches was 14,836, no less than 6,315 having fallen to the share of the Irish members. (*Morley*, "Life of Gladstone," vol. iii., p. 57.)

[1] The text of the motion was as follows:—"That when it shall appear to Mr. Speaker or to the Chairman of a committee of the whole House, during any debate, to be the evident sense of the House, or of the committee, that the question be now put, he may so inform the House or the committee; and if a motion be made 'That the question be now put' Mr. Speaker or the Chairman shall forthwith put such question; and if the same be decided in the affirmative, the question under discussion shall be put forthwith; provided that the question shall not be decided in the affirmative, if a division be taken, unless it shall appear to have been supported by more than two hundred members, or unless it shall appear to have been opposed by less than forty members and supported by more than one hundred members." (*Hansard* (266), 1151.)

of the debate would have to be supported by more than 200 or opposed by less than 40 members. The first day's debate took place on the 20th of February. Sir Stafford Northcote on behalf of the Conservative party opposed the introduction of the closure. The struggle took place upon an amendment moved by a Liberal member, Mr. Marriott, "That no rules of procedure will be satisfactory to this House which confer the power of closing a debate upon a majority of members." The Conservative attack was directed principally against Mr. Chamberlain, who was considered the prime mover in the proposals of the Government. Mr. Goschen, as representing the more Conservative section of the Government party, expressed himself convinced of the necessity for drastic remedies. The eminent Conservative, Mr. Raikes, severely attacked the proposal to place an instrument like the closure in the hands of the Speaker, who would, sooner or later, inevitably be dragged down to the level of a partisan. The continuation of the debate on the 20th and 23rd of March took matters no further: Lord Hartington (afterwards Duke of Devonshire) stated that the Government had decided to persist in their proposal, but other Liberals urged the acceptance of a two-thirds majority as a compromise. Sir William Harcourt pointed to the danger of obstruction and to the possibility of the estimates being, at some future time, prevented from passing by the action of an unpatriotic minority. The speech of the great democratic leader, the aged John Bright, who spoke in support of the Government made the deepest impression; he declared the fears of the Opposition to have been ingeniously exaggerated and pointed out that the Irish Fenians in America, the strongest supporters of the Home Rule party, had openly declared war against parliamentary government in England; the proposals of the Ministry were, if anything, not stringent enough. Mr. Sexton, one of the Irish members, made a powerful reply; he declared that the closure would rob the House of Commons of its three historical pillars, the high impartiality of the Speaker, the readiness of the majority to allow the minority an influence on the despatch of business, and the readiness of the minority finally to acquiesce in the decision of the majority. Mr. Gladstone wound up the debate with a speech in which he declared that he would have been opposed to introducing the principle of the limitation of debate without qualification; the mere existence of such a provision in the rules would materially shorten debate; in the House of Commons a misuse of the power was inconceivable. The debate ended in the rejection of Mr. Marriott's amendment by a majority of thirty-nine votes.

Although, then, the Government succeeded in the end in inducing a majority to endorse the principle which they had adopted, the question remained still undecided at the end of the session. Both House and Government had been overtaxed by a succession of questions of foreign policy and urgent legislative measures, and it proved impossible to find time for any continuous and thorough treatment of this root question of the rules of procedure. The Gladstone Cabinet, however, rightly saw that a solution of the problem had become an absolute necessity of the existence of Parliament,

and resolved upon the unusual measure of an autumn session to be devoted exclusively to the carrying through of a reform of the rules. Parliament was called together for this purpose on the 24th of October 1882. The session lasted six weeks, and the work of procedure reform was only accomplished after a long and bitter struggle.

An entirely new departure, an event of the highest importance in the history of the British Parliament, had taken place. A strongly marked spirit of utilitarian reform in modern British politics has given the period from 1832 to the present day the lasting character of an age of reform. The same spirit now began to make determined inroads upon a province hitherto regarded as sacred, the law of Parliament in the narrowest sense of the term, the internal regulation and procedure of the House of Commons. The first effort at fundamental reform has not, as yet, been surpassed in importance or extent: we have now to discuss it in detail, and the most convenient plan will be to keep to the order of the resolutions.

1. At the head of the new code of rules, as Mr. Gladstone proposed them to the House, was the most far-reaching innovation of all — the resolution introducing the closure. Notwithstanding the protracted war of words waged again over this measure of reform the Government succeeded in carrying it in the form originally proposed. The entire initiative in applying the closure was left to the Speaker; the condition was retained that at least 200 members must support it, as also was the principle of the simple majority.[1]

The struggle in Parliament over the closure, as might be expected from the great importance of the change, was conducted with extraordinary stubbornness, and members of all party shades joined in it. The discussion

[1] The only differences between the closure resolution adopted and that which had been proposed in the previous session were (1) the restriction to the regular Chairman of Committees of the power to initiate closure in committee and (2) the insertion of the words "that the subject has been adequately discussed," and after the words "during any debate."

The subsequent alterations in this important provision may be seen by a comparison with the present Standing Orders 26 and 27; see Appendix.

occupied no less than thirteen complete sittings. The final division gave the Government a majority of 304 votes to 260.

It will repay us to refer shortly to the chief features of the debate. In the first place an attempt was made by the Conservative Sir H. Drummond Wolff to exclude the closure from discussions in committee of the whole House, on the ground that the Chairman of Committees did not possess the same political independence as the Speaker. This attempt failed: motions by Mr. Sclater-Booth and Mr. O'Donnell to except the Committee of Supply and debates on privilege or the business of the House were also rejected: the same fate befell an amendment by the Liberal member, Mr. Bryce, who proposed to transfer the initiative as to closure from the chair to a minister or the member in charge of the motion under discussion (*Hansard* (274), 74–132, 214–266, 289–317, 386–411). Mr. Gladstone described this last proposal as unacceptable by reason of its disparaging the dignity of the Chair.

Of the other proposed amendments should be mentioned one, according to which the effect of the Speaker's intervention was not to be the close of the debate but the limitation of speeches to ten minutes' duration after a certain period. This ingenious idea found no favour with Mr. Gladstone or the majority

The main struggle centred round the question whether a simple or a qualified majority was to be required for terminating a debate. The Prime Minister fought with all his eloquence against Mr. Gibson's amendment, which provided for a two-thirds majority. He expressed his conviction that a great Opposition would always be able to guard against abuse of the closure by the Speaker, and deprecated as forcibly as he could the attack on the fundamental principle of the simple majority which the setting up of any artificial majority in so important a case would involve. The motion was rejected by 322 votes to 238; other motions for setting up an artificial relation upon a division were also rejected, for instance Mr. Brodrick's proposal that the closure should not be enforceable against a minority of 150.

Of the Opposition speeches that of the Conservative, Mr. Ashmead Bartlett, deserves special mention. He pointed out once more the dangers which the closure threatened to bring upon the traditions of the House of Commons. It was, he said, a French invention and only suitable to Frenchmen, who had never known the meaning of real liberty as between man and man, and class and class. There was no closure in the Colonies, or in a country like Hungary with a long parliamentary history. He pointed tellingly to the serious consideration that closure by a simple majority was bound to strengthen the revolutionary spirit in the country: a minority defeated after a fair struggle, in which it has had every chance of stating its case, bears defeat with resignation, and is not disposed to revolutionary measures. (*Hansard* (274), 1028 *sqq.*)

On the 8th of November Mr. Gladstone replied to his assailants in a very effective speech. He ridiculed the idea that the closure would be the death-knell of parliamentary freedom, and pointed out that the country had for a long time been demanding more work from the House: he warned the Irish that the great reforms they desired could only be achieved by means of a radical improvement in the method of work adopted by the House.

As a matter of fact, the behaviour of the Irish, though for very different reasons of political strategy, was during the discussion of the

new rules of a uniformly peaceful character: to a large extent they voted with the Government.[1]

The discussion continued for some days, finally closing with the deciding vote on the 10th of November.

2. The second resolution put an end to the freedom of moving dilatory motions for adjournment and instituted the "urgency motion." The provisions took the form which they have retained to this day, as set out in Standing Order 10.[2]

The discussion on this resolution, which, like the former, was of a forcible nature, took up very nearly four sittings: but only trifling alterations in the Government proposal were made.

3. The third resolution involved an important reform: it provided that upon all dilatory motions—for adjournment, for the Chairman's leaving the chair, &c.—the debate should be strictly confined to the matter of the motion; and that no member who had spoken to any such motion should be entitled to move or second any similar motion during the same debate.[3]

4. Divisions upon dilatory motions might be dispensed with if demanded by fewer than twenty members.[4]

5. The Speaker or the Chairman was to have the power of calling attention to continued irrelevance or tedious repetition on the part of a member and of directing the member to discontinue his speech.[5]

6 and 7. These two resolutions established the present regulations as to postponing the preamble of a bill, and as to the Chairman's leaving the chair when ordered to make a report to the House, without question put in either case.[6]

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[1] The behaviour of the Irish was affected by the beginning of Mr. Gladstone's change of attitude towards the Home Rule party and the commencement of legislation upon Irish land law reform. Later on, a somewhat different judgment upon the problem of procedure was arrived at by the Radical and Nationalist parties: they began to hope that with a reformed procedure it might be easier to overcome future opposition by a Conservative minority to great democratic or Irish measures.

[2] See Appendix. The special distinction between evening and afternoon sittings was not made till 1902.

[3] See now Standing Order 22.

[4] This provision has been replaced by the severer Standing Order 30, which will be referred to later.

[5] See now Standing Order 19.

[6] See Standing Orders 35 and 52.

8. After a comparatively short discussion the standing order of the 18th of February 1879, amended on the 9th of May 1882, which prevented opposed business being taken after 12.30 a.m. (the 12 o'clock rule) was further amended and renewed as a standing order.

This rule, as before mentioned, was introduced as a sessional order in 1871, was annually renewed till 1879, and in that year, with slight opposition, became a standing order. In 1882 strong differences of opinion were expressed as to its effects. Some saw in it a great step in advance: others stigmatised it as one of the chief sources of the parliamentary difficulties that were being felt. Those who took the latter view argued that the rule encouraged "talking against time," *i.e.*, discussing a measure till the arrival of a fixed time put an end to business; further, that the automatic termination of the sitting had raised "blocking" (*i.e.*, the putting down of a notice of objection to a measure, and thereby converting it into opposed business) to a system. It was enough, said one of the speakers, for a member to telegraph a notice of opposition: no more was needed to prevent the discussion of the bill in question. This, it was complained, was done systematically, and the result had been to destroy all chance of private members' bills being carried.[1]

The Government made certain concessions to these objections, making blocking notices valid only for a week, but renewable.

9. The penal legislation against obstruction and disregard of the authority of the Chair which was comprised in the standing order of the 28th of February 1880, and the procedure as to suspension, were reconsidered, and after some alterations were adopted in a form which has proved permanent. Under the previous arrangement a first suspension lasted only for the current sitting; not until the third suspension did it last for a week. The new regulations provided that a first suspension was to last for a week, a second for a fortnight and a third for a month.

The discussion turned chiefly upon one point. It was demanded on all sides that collective dealing with obstructive members should be prohibited. The Prime Minister at last acceded to this desire, but qualified his concession by adding a proviso that a joint disregard of the authority of the Chair by several members might be punished by suspension *en masse*.

10. The tenth resolution gave authority to the Speaker or Chairman to put forthwith from the chair a dilatory motion which he considered an abuse of the rules.[2]

11. On the 24th of November it was resolved that on reaching the order for the consideration of a bill as amended

[1] See, especially, Sir John Hay's speech (*Hansard* (274), 1651 *sqq.*).

[2] Amended on the 28th of February 1888. See now Standing Order 23.

(report stage) the House should enter upon such consideration without question put, unless the member in charge of the bill should wish for postponement, or there should be a motion for recommittal.

12. On the same day the "rule of progress" was finally made applicable to the discussion of supply in the form at present in use.[1] It was, that is to say, provided that whenever the Committee of Supply stood as the first order of the day the Speaker was to leave the chair without putting any question. There would no longer, therefore, be an opportunity for a formal amendment to the question "that I do now leave the chair" which the Speaker had been accustomed to put. The rule excepted the occasions of first going into supply on the Army, Navy or Civil Service estimates respectively or on any vote of credit; on these occasions amendments might be moved or questions raised relating to the estimates proposed to be taken in supply. The rule was only made applicable to Mondays and Thursdays.

The last three proposals were passed without difficulty, though they were subjected to an untiring flow of oratory from members of all parties. On the 27th of November it was resolved that the first seven and the last three resolutions should be made into standing orders. On the 1st of December the Government produced the second part of their reform proposals, four resolutions which collectively were concerned with the setting up of standing or grand committees. The suggestions which Sir Erskine May especially had repeatedly urged for lightening the burden of the House by transferring part of it to large standing committees were at last put into form and realised.[2]

The House showed no enthusiasm for the new scheme, but made no energetic resistance. It was felt that the measure was only experimental, and the House was not prepared to extend its operation beyond the close of the next session. At first the new plan remained merely on paper. In 1883 the two standing committees on Law and on Trade were formed, and were provided with matter for discussion; but after the end of the session of 1883 the regulation was not renewed, and the committees were not formed again till 1888; since that time they have constantly been made use of.

[1] Standing Order 17.

[2] The regulations as to these standing committees are contained, in their original shape, in the present Standing Orders 46–50.

On the 2nd of December 1882 the autumn session, epoch-making so far as concerns the order of business, came to an end. But the impulse given by Irish obstruction to improvement in procedure was by no means exhausted. The new rules, as passed, failed to give complete satisfaction, and there was a widespread feeling, not confined to one side of the House, that further improvements must come. The first great attempt at reform had been carried through by Mr. Gladstone to a large extent as a party measure: many of the provisions had been passed against strong Conservative resistance and without any enthusiastic support from the Liberals: consequently, in the next sessions, the House tacitly abandoned many parts of the new procedure, and it never was really put into force.[1] The natural result was that the delays in business, which had by this time become part of the tradition of the House, continued and were even aggravated by the mass of legislative proposals placed before the House. In spite of the large demands made by foreign and domestic politics upon the time and strength of Parliament, the question of reform in the rules was, under the circumstances, unavoidably kept before the eyes of all the Governments of the next few years. Even the two ministerial crises of 1885 and 1886 could not entirely divert attention from the subject, and it is instructive to note that the Governments of both parties were equally affected. The short-lived Salisbury Ministry of 1885 propounded to the House a new scheme of reform in procedure, at the beginning of the session, a few days only before its fall. The Liberal party under Mr. Gladstone's leadership had scarcely taken up its work before the new Government came down to the House with a motion for the appointment of a select committee to prepare suggestions for further alterations in the rules.[2]

The motion met with complete approval from the other side of the House. It is well worthy of note that both Mr. Gladstone and the leader of the Opposition laid it down that reform of procedure had passed beyond the stage of

[1] See Mr. Rylands's candid observations in the year 1886. (*Hansard* (302), 922 *sqq.*)

[2] *Hansard* (302), 922. Sitting of the 22nd of February 1886.

being concerned with punishment or discipline, that it had long ceased to be a party question, and had become a technical problem to be solved by the united efforts of all parties in the House.[1] The committee asked for by Mr. Gladstone was constituted under the chairmanship of the Marquis of Hartington, and presented a report on the 10th of June 1886.[2] Before the report, however, could be discussed in the House on its merits, the new political crisis arising out of Mr. Gladstone's Home Rule bill had supervened, and the Conservative party had taken the reins of government.

At the beginning of the next session the leader of the new Unionist Government, Mr. W. H. Smith, announced a series of new proposals as to the order of business, which were shortly afterwards laid before the House. On the 17th of February 1887 he moved that consideration of the new rules should have precedence over all other business. The scheme of the Government differed in several material points from the proposals of the 1886 committee, and also from the draft laid before this committee on behalf of the Conservative party. Mr. Smith, in his speech, expressed a feeling of shame that the leader of the House should have to advocate further and more stringent limitations upon freedom of speech; they were, however, inevitable if Parliament was not to become quite incapable of doing its work. He

[1] The debate of the 22nd of February testified to general agreement on this point. The Radical, Mr. J. Cowen, made a remarkable speech, proposing several reforms, which at a much later date were introduced, suggesting, for instance, the saving as much time as possible over questions and the answers to them by the help of the printing press. In 1882 Mr. Cowen had been a very keen opponent of the closure. See *Duncan*, "Life of Joseph Cowen" (London, 1904), p. 130.

[2] This report is detailed and elaborate. It recommends fourteen resolutions dealing with the following points of procedure:—(1) Institution of standing committees. (2) Sittings of the House. (3) Interruption of sittings at midnight, and application of the closure. (4) Consideration on report and third reading of bills referred to standing committees. (5) Committees of the whole House (to be entered upon without question when instruction moved). (6) Government business (the Government to have arrangement of same whether orders or notices). (7) Questions. (8) Divisions. (9) Address in reply to the speech from the throne. (10) Deferring or discharging orders. (11) Bills to be printed before second reading. (12) Introduction of bills. (13) Amendments on report. (14) Lords' amendments.—(Report from the select committee on parliamentary procedure, 10th June 1886.)

pointed out that the uncompleted debate on the address in the current session had already occupied no less than sixteen sittings.[1]

The debate on the proposals themselves began on the 21st of February, with a general discussion of the scheme as a whole, in the course of which the urgency of further reform in the rules was clearly recognised on all sides. Mr. Parnell and the Irish Nationalists, it is true, disputed the value of all reforms in parliamentary procedure both past and future: it was useless, they maintained, to hope for efficiency in the work of the House until it had shaken off its excessive burdens by granting independence to Ireland and similar measures. From another quarter regret was expressed that the Government had not adopted the proposal of the 1886 committee to relieve the House by means of the institution of a system of standing committees. On many sides the view was taken that the only method of really expediting the despatch of business lay in a comprehensive decentralisation of work by devolution. But on all hands great readiness was shown to join in improving the rules of procedure, and a Liberal member of unquestioned eminence, Mr. Lyon Playfair, openly maintained that even the earlier reforms could claim to have had a substantial measure of success.

The debate then turned upon the first of the resolutions proposed by the Government, that dealing with the closure. As to this most important question the Government had become convinced that it was necessary to strengthen the rule adopted in 1882, and the majority in both parties agreed with them. The introduction of an automatic close of the sitting, which the Government had in contemplation at the same time, in itself rendered it necessary to increase the stringency of the closure: otherwise the proposal would simply offer a reward to obstruction. Like most of the other clauses in the legislation of 1882, that which introduced the closure had, till then, remained almost a dead letter. In point of fact, during the *quinquennium* 1883 to 1887 it had only twice been put into operation.[2]

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[1] *Hansard* (310), 1778.

[2] The two occasions were on 20th February 1885 and 17th February 1887: (*Hansard* (311), 256).

The Government looked upon the Speaker's initiative as the chief defect, and proposed to remedy it by giving any member liberty to propose the termination of a debate; but the putting of any motion for closure was, as before, to be conditional on the approval of the Chair: they did not propose any alteration in the rules as to the numbers of supporters or opponents which were laid down in 1882.[1] In addition a special new procedure was proposed by which all amendments might be disposed of *en masse* and a division on the main question taken at once.

There was strong opposition from different quarters. An involved and protracted debate ensued, extending over no less than fourteen sittings: the Government proposal was at last carried, but not without considerable modifications.[2] This was after the leaders of both parties had declared procedure reform to be no longer a party question, and in spite of the Irish members having expressly announced that they were no longer opposed in principle to the closure! The final result was the adoption of a closure resolution which was materially more stringent than the original proposal of the Government. The text of the resolution has become permanent: it is identical with Standing Orders 26 and 27 which now regulate the application of the closure.[3]

The following points in the long debate may be referred to:—

Mr. Gladstone expressed his anxiety lest the imposition on the Speaker of the necessity of consenting to a proposal for closure might prove too severe a burden upon the holder of that high office. Mr. Whitbread pointed out that, as the enforcement of the closure would always take place on the request of the majority, the consent of the Speaker would inevitably make him appear a tool of the Government of the day. The Chancellor of the Exchequer, Mr. Goschen, spoke optimistically: the traditions of the Speakership and the strength of public opinion made it almost inconceivable that misuse would be made of the power to close a debate. Sir Lyon Playfair remarked that an irresponsible minority unchecked by the existence of a closure rule would be much more likely to abuse the forms of parliamentary procedure than a Government and majority returned by the people to obtain specific legislative and political

[1] For the resolution proposed by the Government see Appendix.

[2] 18th March 1887 (*Hansard* (312), 798).

[3] Except that in 1888 the number of members required for the support of a closure resolution was reduced to one hundred.

ends. Mr. Leonard Courtney took the opportunity of suggesting the application of his favourite theory as to proportional voting—a plan little congenial to the English political temperament—and proposed the adoption of a definite ratio of majority to minority to render the closure competent.[1]

In the course of the debate on the separate rules the Irish members proposed a series of amendments aimed at limiting the operation of the closure: they proposed that certain subjects of legislation, such as proposals for increasing the stringency of criminal law in Ireland, or changes in procedure should not be subject to it; that supply should be excepted; that the closure should not be applicable till the debate had continued for six hours, or till four opponents of the motion before the House had been heard, &c.[2] All these motions were rejected. Nevertheless the apprehensions expressed in different quarters induced the Government to accept two amendments, which introduced into the closure rule provisions that the Chair must always determine whether the proposal for closure was an infringement of the rights of the minority or an abuse of the rules; if he considered it to be such he was to refuse to put the motion.[3] Mr. Gladstone perceived in this arrangement also a risk of laying upon the Speaker too heavy a burden, and one alien to his office. It is characteristic of the venerable statesman that he took occasion to hint considerable scepticism as to the value of the closure as a means of expediting parliamentary business.[4]

There was a long struggle upon the section of the resolution which authorised peremptory putting to the vote of the clauses of a bill. Mr. Parnell declared such an innovation to be the severest attack on the rights of members, and Mr. T. M. Healy reminded the House that on one clause of the last Irish Land Act no less than 132 amendments had been moved. The new rule would have cleared them all off the table in one sweep. Mr. Ritchie, on behalf of the Government, replied that Mr. Healy's instance showed the absolute necessity of the proposed alteration; it was intolerable that the rules should permit 132 amendments to one clause.

The Irish and Radical members were in no wise pacified by the repeated explanations of the Government that only sham amendments of an obstructive kind and frivolous subsidiary motions would be affected. They showed their usual ability in pointing out the possible results of such a rule, and the Government could only reiterate their protestations that the necessity of the concurrence of the Speaker would guard the House against abuses. In addition the ministry accepted an improvement, suggested by the Marquis of Hartington, enabling the closure in such cases to be applied to separate parts of a clause. On the whole the Government resisted the cleverly stated arguments of their Radical opponents, and on the 18th March, after getting rid of the remaining amendments, they succeeded in carrying their closure clause by a majority of 221[5]; it was

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[1] *Hansard* (311), 197 *sqq.*, 216, 248, 308, 369 *sqq.*
[2] *Hansard* (311), 486 *sqq.*, 586 *sqq.*, 637, 646.
[3] *Hansard* (311), 930.
[4] *Hansard* (311), 1284 *sqq.*
[5] *Hansard* (312), 798.

immediately resolved to convert the new rule into a standing order. The House had, as the last speaker in the debate put it, *placed its business entirely in the hands of the Government.*

This one success was all that the Government were able to obtain in the session of 1887; their anxieties as to the rules of business were by no means assuaged by their achievement. The great legislative action of the year, the proposal of a further special Crimes Act for Ireland, once more roused such bitter opposition on the part of the Irish members that even the new stringency of the closure rule proved inadequate. The prophecies of many of the experts on procedure were verified; it was found that closure was no satisfactory protection against relevant obstruction of the kind developed by the Irish under Mr. Parnell's leadership; before the end of the session in which their closure proposals had been adopted, the Salisbury Cabinet had to devise a new expedient against obstruction. The discussion of the Criminal Law Amendment (Ireland) bill had extended over thirty-five sittings when, to the amazement of the public, Mr. W. H. Smith proposed the following motion:—

"That at 10 o'clock p.m. on Friday, the 17th day of June 1887, if the Criminal Law Amendment (Ireland) bill be not previously reported from the committee of the whole House, the Chairman shall put forthwith the question or questions on any amendment or motion already proposed from the chair. He shall next proceed and successively put forthwith the questions, that any clause then under consideration, and each remaining clause in the bill stand part of the bill, unless progress be moved as hereinafter provided. After the clauses are disposed of he shall forthwith report the bill, as amended, to the House. From and after the passing of this order, no motion that the Chairman do leave the chair, or do report progress, shall be allowed unless moved by one of the members in charge of the bill, and the question on such motion shall be put forthwith. If progress be reported on the 17th of June the Chairman shall put this order in force in any subsequent sitting of the committee

Acceptance of Mr. Smith's motion meant the establishment of a new edition of the exceptional state of affairs set up for the first time in 1881 under the urgency rule and the dictatorship of the Speaker. Mr. Parnell and others were justified in pointing out that what was threatened was worse than an encroachment on liberty of speech, it was an entire rejection of debate as the legal means of parliamentary procedure in the House of Commons. All arguments proved ineffectual, the Government had determined to break the

resistance of the Irish by draconic measures. The motion, after the debate had been closured, was passed by 245 votes to 93.

The "parliamentary guillotine" was thus set up for the second time in the House, a desperate expedient for carrying out the inflexible will of the majority. However serious the political circumstances were, which drove the Salisbury Cabinet to adopt this plan, there can be no doubt that their procedure was completely out of harmony with the historical character of parliamentary government.

In the debate the Government were extremely reticent, no doubt by reason of their embarrassment. Mr. Gladstone's speech was very involved and enigmatical, but was very fairly claimed by the Government as meant to support them. The Irish denied that there had been any obstruction. Their speakers scornfully asserted that they had learnt how to oppose from the present holders of office, the Tories, who had shown the way during the discussions of 1882 on the closure resolution. On that occasion a procedure rule thirty-two lines long had been discussed during thirty sittings, and had involved fifty-six divisions: at present the measure before the House was a comprehensive bill, affecting the whole of Ireland, and full of details. With great emphasis the Liberal leader, Sir William Harcourt, warned the Conservatives that at no distant date the coming Liberal democratic Government would avail itself of this precedent, in order to force its popular measures through in spite of the Tories.[1] In the division (245 to 93) it appeared that but few members of the Liberal opposition had voted against the "guillotine."

On the 17th of June the parliamentary axe descended with precision: only six clauses had been debated up to that time; the remaining fourteen were disposed of in a few minutes without debate.[2]

The Government found themselves obliged to have recourse to a repetition of the same procedure on a further stage of the same bill. These events clearly proved that no form of closure, however violent, could ensure expeditious despatch of bills opposed by a party; it became evident that the Government would have to proceed seriously with their remaining plans for reform in the rules, which mainly aimed at restricting the free scope of parliamentary action.

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[1] His prediction was literally fulfilled. In 1893 Mr. Gladstone passed his Home Rule bill, and in 1894 the Evicted Tenants (Ireland) bill by the help of the guillotine. Recently the Conservative Government used the same instrument for overcoming the Nonconformist opposition to their Education bill. So Radical a politician as Mr. (now Lord) Courtney, admits that in some circumstances, such a course is unavoidable in the interests of the system of parliamentary government; see his book, "The Working Constitution," p. 173.

[2] See *Sir H. Maxwell*, "The Life and Times of the Right Hon. W. H. Smith" (1894), vol. ii., p. 200.

At the opening of the next session (1888) the House took up the task of reform and disposed of the Government programme with a speed quite unusual in such matters. On the 24th of February priority over all other business was conceded to discussion of the reform of the rules. At the same sitting the first resolution, which effected an entire change in the division and arrangement of the sittings, was discussed and adopted; it now, in a form much altered by recent changes, constitutes Standing Order 1.[1]

As part of the scheme of the first resolution an important step was taken by the House in a matter which had long occupied the minds of procedure reformers: the Speaker was directed to close the sitting regularly at 1 a.m. without any question put, except in certain specified cases. An essentially new feature, an automatic close of the sitting without the consent of the majority, was thereby introduced into parliamentary procedure.

The new order took effect immediately. On the 28th of February the strength of last year's closure provisions was intensified by the reduction to 100 of the number of members needed to make a closure resolution effective. On the same day the third of the series of resolutions was taken into consideration and passed after a short debate. Its terms now constitute Standing Order 18, and deal with the disciplinary procedure upon any disorderly conduct by a member.

The chief question which was raised upon this rule, and which led to some debate, was whether a suspended member was to be excused from serving upon committees, more particularly upon select committees on private bills. It was correctly argued by several speakers that, if he were so excused, suspension might in some cases afford a refractory member a very pleasant holiday from parliamentary work; it was therefore decided to retain the former practice, *i.e.*, that suspension should not release a member from the duty of attending committees upon which he had been placed.

The same sitting also saw the adoption of the rules which are now contained in Standing Orders 5, 19 and 23; they deal with the following subjects: (*a*) priority of Government

[1] For the text of the standing order as settled in 1888, see Appendix. Cf *Annual Register*, 1888, pp. 45 *sqq.*

proposals ; (*b*) ordering speakers to discontinue their speeches on the grounds of repetition or irrelevance ; (*c*) procedure on dilatory motions which are an abuse of the rules.

The seventh rule gave complete expression to an idea which, as we have seen, took several decades for full development—the abolition of all dilatory motions on going into committee with the exception of the special cases provided to meet with the requirements of financial procedure.[1]

The eighth of the Government resolutions has remained in force as Standing Order 41, and forbids the proposal, upon the report stage of a bill, of any amendments which the committee could not have made without a special instruction.

The ninth, which was concerned with the method of voting, led to a somewhat longer discussion : in its original shape it gave the Chair a discretion to choose between a formal division and a vote by requesting members to rise in their places. This motion raised great difficulties, and was only accepted in a materially modified form, that in which, as Standing Order 30, "As to divisions frivolously claimed," it is still in force. With this was associated a provision, of undoubted utility, as to the conduct of the debate on the address ; the stages of committee and report were abolished (now Standing Order 65).

Two resolutions followed, the one regulating the priority after Whitsuntide of bills introduced by private members (now Standing Order 6), and the other repealing the old standing orders of the 9th and 30th of April 1772, which directed that leave to bring in bills on questions affecting religion or trade must be given in a committee of the whole House.

Next came a rule as to shortening the procedure on the introduction of legislative proposals (now Standing Order 11) and a re-enactment of a group of earlier rules as to the arrangement of public business, first adopted on the 30th of April 1869, and now incorporated in the standing orders (Nos. 4 to 7).

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[1] This rule was amended on the 17th February 1891, and again on the 4th March 1902 ; its final form is the present Standing Order 51.

A further decision dealt with the admission of strangers: it simply converted the resolution of the 31st of March 1875 into a standing order.

A set of less important amendments to the existing standing orders was brought forward and disposed of at once; and the resolution of the 12th of March 1886, which dispensed with the putting of questions orally, and provided for their publication in the notice paper, was made into a standing order.

Finally, the Government redeemed their promise to do something for the relief of the House, by renewing the before-mentioned provisions of the 1st of December 1882 as to the setting up of standing committees. It was decided that the two great standing committees should have not more than sixty and not less than forty members, in addition to a certain small number of members whom the Committee of Selection might add.

The course of the debates which, in spite of the amount of ground covered, were completed in five sittings, does not afford much matter for remark. The Cabinet had from the beginning explained that it did not propose to treat the acceptance of its proposals as a question of confidence; the House was to choose the solutions of the various questions of procedure which it thought best, without reference to party allegiance. The House of Commons, with the exception of a few Radical members, had at last reached *the conception that reform of the rules of business was a purely technical question* and of equal importance to every interest and party represented in the House.

The first of the Government's resolutions, changing the hour for beginning the sitting from 4 p.m. to 3 p.m., and aiming at an earlier close, received a welcome almost unanimous; the great number of hours of work after midnight during the last sessions had been recognised as a serious menace to the health of members. The House was prepared to go further; with the concurrence of the Government the hour of 12 o'clock was substituted for 12.30 as the time at which business was to cease. (*Hansard* (322), 1451 *sqq.*)

The strengthening of the closure rule by the reduction to one hundred of the necessary supporters for such a motion found some eloquent opponents, but was accepted by a large majority. (*Ibid.*, 1674.)

There were longer discussions upon the new penal rule, which was defended by the Government as a desirable mitigation of the severity of existing disciplinary powers, applicable to minor cases of disorderly conduct. The new right of the Speaker was well described as the "summary jurisdiction of the Chair," suspension being kept in reserve as a heavier punishment.

A reasonable and successful resistance was made to the suggestion of the Government as to the method of ascertaining the will of the House; they proposed that in every case the Speaker should be at liberty, instead

of directing a division, to call upon the two sides to rise in their places; this would have left the publicity of a formal division, as secured by the printing of the division list, entirely in the discretion of the Chair, and the House hesitated to make so serious an attack on the principle of the responsibility of members to their constituents and to public opinion. The proposal was only accepted in a much weakened form; the alternative was only to be open in the case of divisions frivolously demanded, and the publication of the names of the minority upon votes taken in this special way was expressly prescribed. (*Ibid.*, 1754.)

Almost an entire sitting was occupied by the debate upon the proposal to revive the standing committees As on former occasions the Home Rule tendencies in different parts of the House found strong expression; this time Scotland was put in the forefront. A special committee for the disposal of Scotch affairs was demanded; naturally the Welsh members asked for similar treatment, and there was also a suggestion of an independent committee for foreign and colonial affairs. Mr. A. J. Balfour and Mr. C. Raikes strongly opposed all such suggestions. The latter declared that if Scotland, Wales and Ireland obtained standing committees, London, Yorkshire and Lancashire would soon demand the same, and compliance with their wishes would degrade the House to the level of a collection of half-a-dozen local parliaments; the whole idea was unconstitutional. He closed his speech epigrammatically with the words, "*Nolumus fines Angliæ mutari.*"[1]

It must be granted, taking a dispassionate view of the whole question, that a division of the work of the House of Commons among standing committees, say after the pattern of those of the House of Representatives at Washington, would be a complete breach with the history of the last two hundred years and an alteration in the British constitution of the most profound character.

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[1] Echoing the famous saying of the Barons at Merton on the question of the Bastards, "*Nolumus leges Angliæ mutari.*"

CHAPTER IV

MR. BALFOUR'S PROCEDURE REFORMS (1888–1902)

THE second comprehensive reform in the rules, carried through in 1888, led to a certain pause in the efforts for further improvement in procedure. A space of eight years followed, during which the House on several occasions took preliminary steps in the direction of reform, without ever going so far as to make any material change in its standing orders. After the fundamental revision of parliamentary penal law and the sharpening of the different weapons against obstructive resistance, such further efforts as were made were chiefly directed to getting rid of superfluous stages of discussion and obsolete formalities, and, speaking generally, to arranging and securing an extensive economy of the time of parliamentary work.

Two committees appointed by the House during this period were engaged on the work, viz., the select committee appointed in 1888 under the chairmanship of the Marquis of Hartington, and that of 1890 under the Chancellor of the Exchequer, Mr. Goschen.

The first was instructed to consider the procedure by which the House annually granted supplies to the Crown; the second to inquire whether by means of an abridged form of procedure, or otherwise, the consideration of bills partly considered in the House could be facilitated in the next ensuing session of the same Parliament.[1] While the 1888 committee collected a considerable amount of material by the examination of the two chief officials of the House, and also of the Chairman of Committees and other experts, the later committee confined itself entirely to discussion among its own members.

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[1] (*a*) Report from the select committee on estimates procedure (grants of supply), 13th July 1888.

(*b*) Report from the select committee on business of the House, 14th July 1890.

The report of the committee of 1890 dealt with the rule that, at the end of a session, all bills only partly discussed lapse completely; in the view of the committee the irretrievable waste of time and trouble, having regard to the increase in the amount of business, constituted a serious obstacle to legislation and an encouragement to obstruction. They therefore proposed the adoption of a standing order making it possible by special resolution to carry over to the next session the proceedings upon a bill which was in progress in committee or had reached any further stage. The recommendation was only adopted in the committee after a close division, and was strongly opposed by a minority headed by Mr. Gladstone, whose arguments and conclusions were embodied in a draft report prepared by him.[1] As a matter of fact the House has never, to this day, adopted the idea. On close examination it was seen that the suggested procedure might easily lead to collisions with the rights of the House of Lords—a danger which the Lower House is traditionally anxious to avoid.

The report of the committee on estimates procedure (1888), in spite of very detailed and instructive investigation, only led to trifling suggestions for reform. There was really only one point that was discussed—namely, the idea of referring the estimates, or certain portions of them, to a select

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[1] See pp. 7–9 of the Report. Mr. Gladstone referred to the treatment of this question in the committees of 1848, 1861 and 1869. In 1848 Lord Derby had brought in a bill to allow bills to be transferred from one session to the next. In 1869 a similar scheme had come before the joint committee of the two Houses, together with certain proposed standing orders, drawn up by Lord Eversley (formerly Speaker Shaw Lefevre), having the same purpose. The same subject had been brought forward in the House of Commons in 1882 and rejected. The serious objections to which the plan was exposed were then summed up as follows:—

1. The great advantage of altering in a new session "the frame and scope" of a measure would be lost.

2. There would be a waste of time caused by every member who had got his bill into committee moving for suspension to the next session unless he saw a clear prospect that his bill would pass.

3. The result would be to produce apathy and laxity on the part of the Government and the House in the prosecution of important measures.

4. The House of Lords would be tempted by means of a similar standing order to exercise an unlimited power of postponing bills passed by the Commons.

The majority report was drafted by Mr. Balfour.

committee or a standing committee. The committee came to the conclusion that an experiment might be made by constituting a third standing committee to which certain classes of the estimates or certain votes might be referred by order of the House, this standing committee in respect of such classes or votes taking the place of the committee of the whole House. The committee felt that no examination of the estimates by a select committee would be accepted by the House as sufficient or satisfactory.

The committee met under the chairmanship of the Marquis of Hartington, and took the expert evidence of the Clerks at the table, Mr. (afterwards Sir) R. Palgrave and Mr. Milman, of Mr. Kemp of the Treasury, and of Mr. L. Courtney, the Chairman of Committees. Mr. Palgrave gave a very careful description of the procedure of the House in dealing with the estimates, and expressed himself strongly against entrusting the actual grant of supply to any select committee, or standing committee. He claimed in support of this view the authority of his predecessor, Sir Erskine May, and that of Speaker Denison. He saw no objection to submitting the estimates to a preliminary scrutiny by a select committee. Mr. Milman recommended the appointment of a select committee to go through the Civil Service estimates, and to report to the House all changes they might think worthy of consideration in the full Committee of Supply; he suggested that all matters not so reported should be passed without further discussion in Committee of Supply, and go on at once to the report stage.[1] He drew a sharp distinction between his proposal and the procedure of the committee appointed in the preceding session (1887), on Lord Randolph Churchill's motion, to investigate the Army estimates: the last-named committee had been appointed exclusively to obtain information for the House as to possible economies in military and naval expenditure. Mr. Kemp maintained that there might be some advantage to be gained by a certain amount of grouping of the estimates, which were presented to the House in very great detail, with an unnecessary specification of items. Mr. Courtney showed that the actual debates in Committee of Supply were but seldom of a financial character, being rather directed to political questions arising out of the policy of the branches of administration the estimates for which were before the committee. He did not approve of a regular consideration of the estimates, or any parts of them, by a select committee, believing that this would only waste time and trouble. On the other hand, he recommended the setting up of a standing committee consisting of about a quarter of the House to take the place of the Committee of Supply, at all events upon the Civil Service estimates.

One of the most important facts established before the committee was the undoubted and steady increase in the time occupied upon the estimates during the two last decades. In the session of 1860 the number of hours spent in Committee of Supply was 84, as against 232 in 1884 and 231 in 1887. There were nine sittings on the Civil Service

[1] Report (1888), Minutes of Evidence, Qq. 459–465.

estimates in 1860; in 1884 there were twenty-four, in 1887 there were twenty-seven. (Q. 7.) This fact, which had an important bearing upon the whole order of business, formed the point of departure for the next considerable attempt at reform in the rules.

The return to power of the Conservative party, after the relatively short interval of Mr. Gladstone's last Government and Lord Rosebery's Cabinet, brought with it a renewal of the attempts at practical reform in procedure. At the opening of the session of 1896 the Leader of the House, Mr. A. J. Balfour, announced that the Government would propose new rules as to discussion of supply, brought in his scheme at once, and explained it in a speech of some length at the sitting on the 20th of February.[1]

The discussion on Mr. Balfour's important new departure began on the 25th of February: the debate lasted into a second sitting, when the rule was adopted with a few trifling alterations. The object aimed at was the abridgment of the debate in Committee of Supply, which had been continually growing longer: this was to be attained by assigning a definite period of twenty sittings to supply, to be so arranged as to come to an end before the 5th of August. On the motion of a minister three additional days might be allotted to the discussion either before or after the 5th of August. On the last day but one, at 10 p.m., the Chairman was to stop the discussion of the estimates and to put all questions necessary to dispose of the outstanding votes in committee.[2] The rule, it will be seen, had not only the effect of shortening the time of discussion in supply; it introduced a further element of time-security into the course of parliamentary business, thereby following a tendency which, as we know, had increased continuously in strength during the whole period of reform. The opponents of the measure adduced weighty arguments and refused to see in it anything further than a permanent introduction of the guillotine or "closure by compartments" into the order of business, and the tying-up of the House when engaged on one of its vital functions, that of discussing supply. But

[1] *Parliamentary Debates* (37), 723. The full text of this rule, in its present shape, is given in the Appendix (Supply Rule).

[2] *Ibid.*, 723-736.

the influence of such *doctrinaire* trains of thought on the House had disappeared. This was manifest in the whole discussion on the change, which made much more deviation in principle than in practice from the historic order of business.

The course of the debate throws many instructive lights upon the way in which this most important administrative function of Parliament had been moulded during the last generation. In his introductory speech of the 20th of February Mr. Balfour gave a masterly specimen of clear and impartial argument in favour of the reform. It was, he said, an ancient superstition that the object of discussion in supply was to insure an economical administration of public money. That might have been the case at one time, but now it was Parliament and not ministers that desired to increase expenditure. The old technical rule that only a minister of the Crown might move to increase a vote had become quite illusory: a private member often moved a reduction of a vote in order by his speech to urge its increase. In his opinion the most important function of discussion in supply was to afford private members an opportunity for exercising the right of criticising the policy and administration of the Government. The modern generation's desire to speak, and the belief, which might perhaps be called an illusion, that the Opposition ought to hamper the Government programme to the full extent of its power, had led of late years to an enormous lengthening of debates in supply. The want of a special day devoted to the estimates was also very unfortunate. The earlier debates in class I were regularly prolonged to an inordinate extent, and really important criticisms were frequently thrust to the end of the session, when all true parliamentary vigour was exhausted. The Government, therefore, proposed a new scheme: first of all the fixed number of twenty sittings was to set a limit to the dragging on of the debates; further, Mr. Balfour suggested that, instead of insisting on finishing one class of votes at a time, on each day when supply was taken some important vote should be placed first, and that, if necessary, a new important matter might be taken up before the discussion of the previous class was closed; the less important votes might be left over to the end. He anticipated the objection that the scheme would render certain the voting of large sections of supply without discussion, and answered that such was already the case; the new procedure would have the advantage of allowing many, if not all, of the important votes to come up before the "guillotine" came into action. Statistics showed that twenty days was a fair assignment.[1] Finally, Mr. Balfour pointed out that the House had, after careful deliberation, decided to allow the guillotine in the case of important bills, and its use for supply was much more fully justified. It was absolutely necessary that the latter should be dealt with in the year, while there was no such need for disposing of bills; besides, the estimates were, with insignificant variations, the same from year to year; and the House

[1] Mr. Balfour calculated that in the six years 1890–1895 the number of eight-hour days given to supply had been respectively 28, 23, 8, 27, 19, 20. Of these the numbers before the 5th August were respectively 21, 23, 7, 11, 13, 18. (*Parliamentary Debates* (37), 731, 1022.)

knew that in whatever shape they were introduced in that shape they would pass; there was hardly ever an alteration of an estimate.

It is instructive to observe that the most eminent financial experts of the Opposition, Mr. L. Courtney, the former Chairman of Committees, and Sir William Harcourt, who had been Chancellor of the Exchequer, agreed in the main with Mr. Balfour's suggestions, save that the latter spoke strongly against the application of the guillotine to supply (*Parliamentary Debates* (37), 953–970). It was only to be expected that the Irish members would oppose: they insisted upon calling the resolution a "muzzling order."

Mr. Balfour might fairly disclaim any revolutionary tendency; it could hardly be said to make much difference to the constitution whether twenty or twenty-seven sittings were given to the discussion of supply. He showed that the application of the closure to the estimates with their numerous details would be useless. The mere divisions, if all the 148 heads were contested, would take up six whole sittings (*Parliamentary Debates* (37), 1026, cf. 1323.)

The picture of the future danger to the Conservatives in case of a Radical Government applying the new system made little impression on the House. Mr. Balfour ridiculed this way of looking at the matter, and drily remarked that if ever a revolutionary Government came to have power in England they would trouble themselves but little as to the existence of precedents for their use of the forms of procedure.

The Radical Mr. H. Labouchere endeavoured, in a very entertaining speech, to prove that the Government were attempting to strangle free dom of debate. In sessions prior to 1886, to which Mr. Balfour had not referred, more than twice twenty days had been given to supply. He calculated that the foreign and colonial estimates, and those for the Army and Navy, would occupy the greater part of the twenty days, and no proper time would be available for the Civil Service estimates and the Scotch, Irish, Welsh and English votes. The House of Commons was to be treated to the old French parliamentary *lit de justice* in which they were simply to record the wishes of the Government: there was no chance of improving the supply procedure without a thorough system of devolution, with special committees for Army votes and Navy votes, and Irish Scotch and Welsh committees formed of members from those countries. (*Parliamentary Debates* (37), 1128–1138.)

The really serious difficulty latent in the proposal did not come up till the last stage of the debate. The question was then raised how the close of supply was to be brought about at the end of the allotted time. It might be anticipated that in any case many votes would have to be taken without any discussion: if each was to be put separately and divided upon, the divisions would occupy several sittings. This would be an absurd result for a time-saving reform: it would simply have substituted divisions on undiscussed estimates for discussion. Mr. Balfour explained that, as he understood the rule, it would be competent on the last day to move that all undisposed of estimates be taken by one resolution like that used for a vote on account. (*Parliamentary Debates* (37), 1323–1343.)

The most serious objections were raised from all sides. the course suggested would prevent the House from taking exception to any single vote without opposing all the votes that had not been completed. This being

practically impossible, the House would be deprived of its constitutional rights concerning a large proportion of supply. To these arguments Mr Balfour replied that, so far as he could recollect, the House had never rejected a single vote: it was a purely imaginary case that was being raised, and a practical reform should not be wrecked on such theoretical grounds: the constitutional objection, however, made some impression on him. He agreed to allow his new rule to be a sessional order only, and promised a select committee if any difficulty was found in taking the divisions at the end of the supply period. He had already made one concession, that the period of twenty days might, on the motion of a minister, be increased by three days.

On the 27th of February 1896, after a three days' debate, the new supply rule was adopted by 202 votes to 65.[1] The procedure established by it was regularly adopted at the beginning of each session as a sessional order for the next few years, until, as we shall shortly learn, it became a standing arrangement of the House.[2]

This took place as part of a further thoroughgoing revision of the rules; after 1896 the Conservative-Unionist party came into possession of a large and compact majority; but in spite of an undeniable improvement, the Government found the pace of business drag and felt bound to take up the subject once more. Mr. Balfour, the Leader of the House, resolved upon a new scheme of reform scarcely inferior in scope to the measures of 1882, 1887, and 1888. In the session of 1901 his action was confined to a few points.[3] On the 4th of March he moved an alteration in Standing Order 51 by which the opportunities hitherto available for

[1] *Parliamentary Debates* (37), 1344.

[2] At the same time as the first passing of the supply rule, on the 27th of February 1896, another resolution affecting the rules was passed, namely, that in committee, or on report, a member in charge of a bill might move, on two days' notice, to omit any clause or clauses. (*Parliamentary Debates* (37), 1355.)

[3] In this session, on the 5th of March 1901, there was an instance of the unusual procedure of a suspension *en masse*. A vote on account of more than £17,000,000 was under discussion, and about midnight the Prime Minister moved the closure: the Irish members, who had not as yet been able to join in the discussion resented the proposal so strongly that they refused to leave their places for the division, thus committing an act of disorder; the Speaker was summoned, and, on the continued refusal of the refractory members to comply with the rules, he named twelve of them: Mr. Balfour moved that they be suspended. On this motion being carried they refused to obey the order to leave the House, and one after the other they were removed by the Serjeant-at-arms and his assistants. (*Parliamentary Debates* (90), 692–696.)

preliminary debates on going into Committee were diminished by the exclusion of one class.[1] A week later a further resolution was passed, shortening financial procedure, the 12 o'clock rule being excluded from operation upon the report of supply.[2] On the 2nd of April, in the same session, an amendment was made in Standing Order 50, the procedure upon the report of a bill by a standing committee being assimilated to that upon a report by a committee of the whole House, as regulated by Standing Order 40 (26th November 1882). The House was in future, in both cases, to take up the consideration of the bill without question put, *i.e.*, without any formal question being stated to the House as to whether this course should be adopted, thus avoiding the risk of a new opportunity of postponing the real business before the House.

In the following session, 1902, Mr. Balfour laid before the House a scheme of improvement complete and systematically worked out. The way had been prepared by statements made by leading men in both parties, which disclosed their conviction of the necessity for energetic reform. Two members of the Government, Mr. Hanbury and Mr. J. Chamberlain, gave unrestrained expression to this view at public meetings, the latter in his aggressive style describing the object aimed at as being "to give to the majority of the House of Commons a greater control over its own business and a greater control over the men who insult and outrage it." But even so moderate a politician as the ex-minister Sir Henry Fowler spoke of the "antiquated procedure" of supply and of the necessity of treating the affairs of the nation in a business-like way and applying modern resources to their despatch.[3]

On the 30th of January the Prime Minister opened the proceedings with a detailed speech in which he reminded the House that there was no instance in which the House had had reason to regret any of the frequent changes in

[1] *Parliamentary Debates* (90), 442. The Speaker was to leave the chair without question put on the order of the day for Committee of Ways and Means being reached.

[2] It had already been so excluded since 1896 by sessional order; the only change made was from sessional to standing order.

[3] *The Times*, 3rd January 1902.

rules that had been made since 1832.[1] He further pointed out that whereas in the eighteenth century the idea lying behind the development of procedure was to find opportunities for debate, the problem since the Reform Bill had been the exact contrary, how to keep debate within reasonable limits.

The scheme proposed by the Government to the House comprised no less than twenty-four resolutions and affected nearly every important department of procedure.[2]

In attempting to take a survey of the latest great set of procedure rules, it may be suitable to place the most important proposals in the forefront.

First. The most striking innovation proposed by Mr. Balfour concerned the daily and weekly programme of business. It had long become impossible, in the time allotted to the Government by the rules, to accomplish even the most necessary legislative and administrative tasks. It had, therefore, been indispensable every session to demand further time for Government business, and identical and wearisome debates always took place on the subject, wasting precious time. Now Mr. Balfour asked, once for all, for a generous increase in Government sittings. At the same time a suggestion was made in the direction of a more convenient division of the work of members, who felt the duration of the sittings, extending technically from 3 p.m. till after midnight, to be a serious burden;[3] the plan proposed was a regular division of the sittings, except those on Fridays, into two, one in the afternoon and one in the evening. Friday was to take the place of Wednesday as the day reserved for private members, and was to be the only "morning sitting," beginning at noon and continuing till 6 p.m. The afternoon sittings were to begin at 2 p.m., an hour earlier than heretofore, and to end at 7.15 for opposed business, and, in any

[1] *Parliamentary Debates* (101), 1350.

[2] For the text of this scheme, printed in *The Times* of the 31st January 1902, see Appendix.

[3] In practice there had long been an interval for dinner from 7 to 10, to this extent that during this period important members never spoke, but left the field open *diis minorum gentium*. Such members as wished, by the medium of the local newspapers, to address their constituents and show their parliamentary diligence, chose the dinner hour for their efforts. See *Macdonagh*, "Book of Parliament," p. 233.

case, not later than 8, when an interval was to be taken till 9 o'clock; the sitting was then to be resumed and continued till 12 or 1 o'clock, as the case might be. The new regulation rendered it possible to take different subjects at the two sittings without their clashing; it also prevented talking against time, *i.e.*, long debates being carried on upon some indifferent subject merely for the purpose of delaying or preventing the discussion of a subsequent item on the programme. By far the greater share of the four days with divided sittings was to be assigned to the Government.

The chief mark of the new arrangement was the further serious restriction upon the parliamentary scope of private members. The attempt made to settle the plan of work almost minute by minute brought down upon it from the Opposition the mocking designation of the "parliamentary railway time-table." The effort to obtain a material increase in the certainty and punctuality of parliamentary business was assuredly very obvious in Mr. Balfour's scheme. With this object it was in the first place proposed that "urgency" motions must be brought forward at the beginning of the sitting, but only be discussed in the evening. To the same end he dealt ruthlessly with a special right that for centuries had belonged to each member of the House, that of calling immediate attention to questions of privilege, a right often used by the Irish members with very disturbing effect upon the course of business: such matters, on the demand of a minister, were in future to be referred without debate or division to the Committee of Privileges for inquiry and report.

Secondly. A series of proposals to bring about economies of time was brought in:—

1. On the rejection of a motion to postpone the second or third reading of a bill for three or six months, no further time amendment was to be permissible.

2. The standing order as to dispensing with divisions frivolously claimed was to be amended by leaving out the provision that the Clerk should take down the names of the members in the minority.

3. Notice of motion for the reference of a bill to a standing committee was to be given before second reading and discussed and voted upon along with the same. Further,

it was to be permissible to refer to a standing committee a bill which had been before a select committee, and to proceed upon the report of the standing committee and third reading, without the necessity, theretofore insisted on, of a reference to a committee of the whole House.

4. The old traditional rule that money bills must be submitted to preliminary discussion in committee of the whole House was not actually to be abolished; but debate on the report of a resolution allowing the introduction of such a bill was to be forbidden, and the question that the House do agree with the committee in such resolution was to be put forthwith.

5. A new and more expeditious method of introducing bills was to be made possible.

6. A material abbreviation of the report stage was proposed. It had always been out of order to move on report to amend a bill which had not been amended in committee: thenceforth, on the report of an amended bill, no amendments were to be moved, except such as were moved by the member in charge of the bill or arose out of changes made in committee.

7. Consolidation bills (*i.e.*, bills re-arranging, editing and combining numerous separate old enactments, which were often made necessary by the English method of dealing with special parts of a subject by successive acts of parliament) were to be referred to a special select committee, and dealt with in a summary manner by the House.

8. At an evening sitting the House was not to be counted out before 10 o'clock.

9. The supply rule, as amended on the 7th of August 1901, with certain further time-saving modifications, was to be converted into a standing order.

10. The normal discussion on a public bill was to be shortened in the following ways:—

(*a*) Every bill, after second reading, was to stand committed to a committee of the whole House, unless a motion (of which notice was to be given before second reading) was brought forward for referring it to some other kind of committee, such motion to be debated along with the second reading, and to be put forthwith after the second reading.

(*b*) A member in charge of a bill was to be at liberty to move the omission of a clause or clauses before amendments to such clause or clauses were discussed.

(*c*) At the conclusion of a sitting of any committee of the whole House, the Chairman was to leave the chair without question put.

11. Questions were for the future only to be answered orally upon special request. There were to be two times for questions, namely, the two periods after the interruption of business at the end of the two sittings, afternoon and evening: if it was found impossible to get through the questions before the close of the evening sitting, ministers were to be at liberty to print the answers in the next day's "Votes and Proceedings."

Thirdly. An important innovation in the organisation of the House was proposed—that a Deputy Chairman should be appointed to exercise all the powers of the Chairman of Committees in the unavoidable absence of the latter, including his powers as Deputy Speaker.

Fourthly. A plan for further strengthening of penalties for breaches of discipline was suggested. A suspension was on the first occasion to last for twenty days, on the second for forty, on the third for eighty. These days, too, were not to be calendar days, as before, but sitting days, and, if necessary, a balance was to be carried over to the next session. If suspension were resisted so as to make physical force requisite for the removal of a member, it was in any case to last for eighty days. It was further proposed that a suspended member should not be allowed to return until he had written to the Speaker to express his sincere regret for his offence; but this was not to make his exclusion last for more than 120 days in all.

A glance at the range of these provisions will convince anyone that no such thorough or extensive plan for the improvement of the methods of parliamentary work had ever been laid before the House of Commons. Mr. Balfour was justified in his lament that frequent, almost annual, changes had to be made in the rules, and that these were generally postponed till the stress of urgent necessity was

felt.[1] The Government hoped that the acceptance of their scheme would have the effect of keeping the machinery of Parliament unaltered and efficient for some considerable time. In an extremely able speech, full of detail, Mr. Balfour adduced powerful arguments to show the indefensible position of parliamentary work. He pointed out how completely the present conditions differed from those under which most of the rules and customs of parliamentary procedure had been originated; the surprise he felt was not at the necessity for changes, but that it had been found possible for 658 members, however well disposed, to carry on the business of the country under the old conditions.[2] "With the change in the circumstances of the House, in itself revolutionary, our rules which were originally framed to promote a fertilising and irrigating flow of eloquence are now, it appears, required to dam up its vast and destructive floods, and keep them within reasonable limits" The reception given by the House to this bold plan was, on the whole, decidedly favourable. Sir H. Campbell-Bannerman, on behalf of the Opposition, disclaimed all intention of dealing with it in a party spirit, and in a long speech gave his adhesion to most of Mr. Balfour's proposals.[3] Speaking generally, he found fault with details only, as, for instance, the strengthening of the punishment for disorder; he intimated his doubts as to the value of the proposed division of the sittings, and of the change from Wednesday to Friday for

[1] Statistics as to the session of 1901 show that during its course the Government brought in no less than twenty-one motions for change in the standing orders and for enlargement of their share in the time of the House: many precious hours were thus wasted upon procedure debates. At the same time the closure was applied in an unprecedented way.

[2] Some remarkable figures were given by Mr. Balfour. "In 1800 the House sat on portions of seventy-two days. Unfortunately the records of Hansard do not enable us to tell how long the sittings were. In 1901 the House sat 115 days, and these sittings, as hon. gentlemen know to their cost, were in many cases extremely prolonged. In 1800 supply took one day, in 1901 it took twenty-six days. In 1800 not a single question was put during the whole session of Parliament; in 1901, including supplementary questions . . . 7,180 questions were asked These 7,180 questions occupied 119 hours, close upon fifteen eight-hour parliamentary days, or three weeks of Government time" *Parliamentary Debates* (101), 1352.

[3] *Parliamentary Debates* (102), 548–563.

private members' business. The only proposal to which he really advanced serious objections was that for limiting the right to put questions to ministers: he pointed out that a large proportion of the questions during the last few years bore upon the most pressing subjects of the day, such as South African policy, the war, and Ireland; these were the sore points in politics, and it was no abuse of the right of questioning ministers for members to interrogate them on such subjects in the hope of enlightening public opinion. The possibility of asking the Government publicly for information on matters of state was, at the present time, one of the most important constitutional rights of the House and imposed upon members of parliament one of their chief duties. After all, said the Leader of the Opposition, the House was "the grand inquest of the nation," not a mere factory of statutes, as the Government—to judge by some unintentional indications in their proposals—seemed to think. He concluded by moving that the proposals of the Government should be referred to a select committee; but the mildness of his criticism, both in matter and form, seemed to point to his suggestion being a formality required by the fact of his being in Opposition. The motion, after some considerable debate upon the rules as a whole, was rejected by 250 votes to 160.

The Irish members, of course, under Mr. J. Redmond's leadership, offered an open and resolute resistance; their arguments were much the same as in 1882 and 1888. They were, declared Mr. Redmond,[1] strangers in the House and did not regard it with feelings of reverence, affection or loyalty; they had no cause to love its traditions; on the contrary, for a hundred years it had been to them and their constituents an instrument of oppression and wrong. "The smooth and rapid working of any legislative machine," he said, "depends not upon rules and standing orders and pains and penalties but rather upon the spirit of the members who form the legislature, upon their loyalty to tradition and their willing subordination of private and individual interests to the common good." That these incentives were lacking in the case of the not inconsiderable Irish minority was the chief source of the creeping paralysis which had overtaken the House, and which could not be cured by any changes in the rules of business. The House of Commons was rapidly sinking both in power and in public estimation; the Irish members did not mind, but the British did. The cause was not obstruction, but the attempt to transact all the local concerns of England, Scotland, Wales and Ireland and the steadily accumulating business of the world-wide British empire. This brought him

[1] *Parliamentary Debates* (102), 580–595.

safely to the argument for Home Rule. His overstrained and partisan views were emphatically opposed by Conservatives and Liberals, who pointed to the increase in speed and facility of procedure which had unquestionably been brought about by previous reforms. Mr. Balfour especially pointed with justice to the work accomplished by Parliament during the last thirty years. The two last sessions had shown that the House of Commons still had plenty of strength to undertake great measures of legislation; it had been able to deal not only with complicated and difficult legislation on popular education, but had passed important and comprehensive measures dealing with questions affecting Ireland itself.

The discussions on the separate rules were carried on in sittings which, with irregular intervals, lasted from February to May: the first to be disposed of was the institution of the office of Deputy Chairman, which was accepted unanimously. On this matter the House was completely harmonious: the only disagreement was upon the question whether the new officer of the House was to be paid or not; the Government, followed by the majority, declared against his receiving any salary.[1]

On the discussion of the next resolution, as to more rigorous penalties for breaches of order, things took a different turn. The debates were prolonged over two sittings and displayed so much opposition from various quarters, even from among the Conservative members, that the Government preferred to accept Mr. Redmond's motion for a temporary postponement: in point of fact, the House never returned to the subject. The consideration, however, of Standing Order 21 (now No. 18) had reached a point at which the provisions, which it originally contained, as to the length of a suspension had been struck out, but no others had been inserted to take their place. The rules therefore stand in the peculiar condition of being silent upon the most important point in the rule, the punishment to be awarded for disorder: in the official edition of the standing orders the old words appear crossed out, no substitutes for them having been provided.[2]

The debates on this subject occupied the greater part of the sittings of the 11th, 13th, and 17th of February. Mr. Balfour's proposal to require a written apology before allowing the return of a suspended member was

[1] On the 14th of February, immediately after the resolution was passed, Mr. Jeffreys was chosen as the first deputy chairman.

[2] Five years later, in 1907, this is still the case.

objected to on all sides Mr. McKenna produced statistics for the past twenty years as to the application of the standing order, to prove that no additional stringency was requisite. In 1882–1884 there were no suspensions, in 1885 there was one, in 1886 one, in 1887 three, in 1888 one, in 1889 none, in 1890 one, 1891 none, 1892 one, 1893 and 1894 none, 1895 one, 1896 five, 1897 none, 1898 one, 1899 and 1900 none. In 1901 there had been the scene alluded to above, followed by a suspension of several members together. There had been only one case of a member being suspended twice in one session, namely, in the year 1887. What need was there for these threats of severe punishment for second and third offences? One speaker after another opposed the new rule and specially powerful speeches were made by Mr. John Burns, the Labour member, and Mr. John Redmond, the Nationalist leader. The House showed its good sense and its want of anxiety as to its discipline by leaving the whole question in the air.

After this, the provisions as to suspension of the sittings by the Speaker, as to the new method of introducing bills, and as to the changes in the daily and weekly arrangement of the sittings, went through without much difficulty on the 17th, 18th, and 20th of February. The proposed new standing order for lessening the number of divisions on second and third readings was postponed.

There followed a long interval in the discussion, which was not resumed till the 8th of April. The standing order (No. 1) as to the sittings of the House was then considered and its amendment concluded, the Government having withdrawn the section as to the change of the time for questions, which had proved very unwelcome to the House, and accepted some other minor alterations. The incorporation of the supply rule among the standing orders required somewhat lengthy debate on the 11th, 24th, 25th, and 28th of April, being finally approved on the last of these days by 222 votes to 138. On the 29th of April the Government succeeded, after a debate lasting nearly through the night, in steering into port their reform as to printed answers to questions. Then, with immaterial changes, the following resolutions were adopted in their turn :—The additions to the rule as to "urgency" motions, the new rule concerning private business, the change in Standing Order 47 as to standing committees, and, finally, Standing Order 1 in its new form with the rules as to division of the sittings.

The debates on the separate rules were for the most part dreary and somewhat uninstructive: the discussions on the division of the sittings should, however, be referred to. The main issue was the unsatisfactory

position in which this proposal would be sure to place private members' bills. In the past twenty years the share of unofficial members in legislation had practically been annihilated by the claims of the Government on the time and energy of the House. Many members on both sides protested that, in their opinion, the change of the private members' day to the end of the parliamentary week and the absorption once for all under the standing order of all the time of the House after Whitsuntide, would actually reduce to zero the chances of passing private members' bills. Mr. Balfour, in his calm manner, argued that the Government plan was more favourable to private members than the existing state of affairs, the Cabinet having during the last ten years regularly taken almost the whole time of the House by simple resolutions, while the new proposal settled and secured the share to be given to private members. But he had to confess that the existing situation of the initiative of private members was highly unsatisfactory.

Mr John Ellis, a member of parliament with great experience in matters of procedure, described this situation in the following terms: "The Home Secretary has told us that in 1882, when he was an unofficial member in opposition, he carried an important measure of licensing reform through the House. That cannot be done nowadays. . . . At the beginning of the session hundreds of hon members ballot for the chance of introducing bills, but not four per cent of the bills introduced ever receive satisfactory discussion; not two per cent ever get into committee; and not one per cent find their way on to the statute book. There is now absolutely no chance of an unofficial member carrying a bill that effects any reform of moment."[1] Sir H. Campbell-Bannerman, in conclusion, said that, under existing circumstances and with the prospect of their being perpetuated by the new standing order, there did not seem to be much object in leaving to private members any right of initiative; as, for the future, they could no longer make any practical use of it.

Long discussions followed upon the supply rule and the proposal to make it permanent. Opinions were sharply divided: Mr. Balfour maintained with some satisfaction that this measure had made discussion in supply a real thing again from 1896. Up to that time supply had been sporadically discussed, at uncertain intervals, late at night or in the early hours of the morning, in a half empty and exhausted House, and finally, towards the end of the session, had been rushed through at a gallop. Now the public and the House were in a much better position for exercising their important right of criticism of the estimates owing to the obligatory discussion on supply which came up once a week.

On the other hand, the opponents of the new regulation urged that it had utterly failed to attain its professed object—effective parliamentary control over expenditure. Each year the fixed span of time given by the supply rule had prevented more than a small part of the estimates being really discussed: the rest had been disposed of in a few hours, by the help of the guillotine, after a few divisions and without any deliberation. In the years from 1897 to 1901 estimates of 52, 43, 56, 75, and 88 millions respectively had been dealt with in this summary way. Discussion in supply was, therefore, a mere farce. Parliament had never been so extravagant in money matters as since 1896.

[1] See *The Times*, 9th April 1902.

Mr. Balfour rejoined by stating his conviction that the rule, if anything, gave too long a period for the discussion The supply rule had furnished on the whole thirty-five sittings devoted exclusively to finance. The normal duration of a session could not be greater than six months—as Mr. Gladstone, too, had thought—and how was it possible out of this to spare more than thirty-five sittings for supply? He had to admit that, in consequence of the unsatisfactory division of the subject matter, whole large sections of the estimates were taken together and thus at the end large departments of administration remained without discussion; but the Government were powerless to prevent this, as on some points debates took place which were long and useless and went into too minute detail.

During the discussion the need for an economical and appropriate division of the time allowed between the different heads of the estimates was referred to; and it was suggested that this might be arranged by a committee, such as that on Public Accounts; this seems a fruitful and realisable suggestion.[1]

Altogether, twelve of the twenty-four proposed resolutions were adopted, and came into force at once. Although the Prime Minister promised an early resumption of the debate on the remaining twelve proposals and the completion of the discussion on the penalty question, they were never taken up again either in 1902 or in the following sessions.

With the 2nd of May 1902, then, we close the story of the reforming activity of the House of Commons in respect of its procedure and domestic management.[2] It remains to be seen whether this is really the end, or whether in the near future further alterations will be proposed and adopted. One prediction may, however, be hazarded: that alterations of great scope are hardly to be expected. Possibly, even probably, some of the small economies of time proposed by Mr. Balfour in 1902 and not yet accepted, will be realised; but great changes involving matters of principle seem hardly possible except as accompanying great constitutional alterations. Generally speaking, the present order of business appears to incorporate all the practical inferences which the House of Commons was bound to draw, as to its procedure, under the influence of the continuous changes we

[1] See the very instructive remarks and proposals of the Conservative member, Mr. T. G. Bowles, before the committee on National Expenditure, 1902 (*Sessional Papers* (387), Qq. 1011 *sqq.*, especially Q. 1028).

[2] The above statement refers to the year 1905: the alterations made by the new parliament of 1906 will be dealt with in a supplementary chapter at the end of the work.

have been studying; the ripening of the modern system of parliamentary cabinet government, from the time of the first Reform Act onwards, has produced all its inevitable results upon the rules of the House.

As to some points of procedure there are, no doubt, in the House itself, strong feelings as to the need for reform. Amongst other things there is the suggestion of a time limit for speeches. On the 14th of May 1901 Sir Joseph Dimsdale proposed a motion in favour of such a limit, but it was rejected by 117 votes to 83. The eminent Liberal leader, Mr. J. Bryce, has recently given the idea his blessing,[1] and in the session of 1904 similar suggestions were made several times. It may reasonably be doubted whether strict rules of this kind, which are a negation of free parliamentary action, will ever find favour in the House of Commons.

A second problem, which has been much canvassed in recent years, is presented by the "blocking" which has prevented the discussion of proposals by private members on Fridays and after midnight on other days. In the debates upon the reforms of 1902 the precarious position in which private members' motions stand at present was the subject of severe criticism. From many quarters it was denounced as intolerable that after midnight an objection by a single member should be enough to prevent discussion of a private member's motion standing as one of the orders of the day. There is, too, a further difficulty of a somewhat similar kind. Under a practice, founded on an apparently insignificant decision upon the old rules, an impenetrable barrier has been placed in the way of the mere *introduction* of many motions, and has put into the hands of the Government a new weapon of defence, enabling them almost completely to exclude subjects which they consider unwelcome or dangerous. The practice is an application of the rule of procedure which forbids motions of an anticipatory nature: it is out of order to introduce either a bill or a motion which from its contents appears to cover all or part of the ground taken up by a motion or bill already among the orders of the day, even for a later date. The order of the day which has already been set down is said to "block"

[1] *Parliamentary Debates* (102), 765.

the introduction of motions or bills dealing with the same subject matter. The decision whether this rule applies in any given case rests with the Speaker. A member may, therefore, by arrangement with the Government, or even without any formal communication with them, introduce a bill or motion at an opportune time, either setting it down for a distant day or leaving the date for discussion quite open. By this means, in consequence of the principle alluded to, so long as the bill or motion remains among the orders, the Government are protected from all discussion of the corresponding subject. In the session of 1904 the Balfour Cabinet managed with the help of blocking motions to elude all discussion of the delicate questions of Protection and of the employment of Chinese labour in the Transvaal—arousing by so doing much indignation among the Opposition.[1]

Under the Speaker's ruling the few opportunities for free general debates—on the occasion of the regular motions for adjournment at Easter and Whitsuntide, and upon the Appropriation bill—have been still further cut down: he held that the effect of "blocking" motions extended to these occasions and so diminished the already restricted scope of the political strategy of the Opposition and private members.[2] To the repeated requests that the Government would endeavour to find a remedy for this tender spot in the order of business the Ministry have till now[3] turned a deaf ear; and they have been equally unwilling to appoint a new committee of investigation to overhaul the whole of the rules.[4] On this and other questions of procedure there seems to be a

[1] On the 22nd of June 1904 a Liberal member asked leave to move an urgency motion calling attention to the danger of an epidemic of beriberi caused by the influx of Chinese into South Africa: the Deputy Speaker ruled it out of order, explaining that this motion appeared to him to be blocked by motions, set down by Mr. Macdona and other members, for the discussion of the question of Chinese labour in the Transvaal.

[2] See the very instructive debate of the 19th May 1904 (*Parliamentary Debates* (135), 370–390): there are several opinions by members of both parties on the effect of the latest reforms; see especially the speech of Mr. Gibson Bowles (*ibid.*, 376).

[3] This refers to the year 1905. The question of "blocking" motions has recently been brought up again. see Supplementary Chapter.

[4] *Parliamentary Debates* (135), 371–375.

feeling on both sides of the House of Commons that some restriction, even if not a severe one, should be placed upon the Government's power over the rules. But it is unlikely that any great step will be taken in this direction: it would be a reversal of the whole tendency of the procedure reforms of the last decades, a measure for which there appears to be no occasion, unless violent and fundamental changes are carried out in the constitution of state and parliament in Great Britain.

If we take a rapid glance back over the developments in the procedure of the House of Commons during the last quarter of a century, we shall find little difficulty in recognising from the course of events, the chief results which have been effected. Three tendencies stand out in bold relief; the strengthening of the disciplinary and administrative powers of the Speaker, the continuous extension of the rights of the Government over the direction of all parliamentary action in the House, and, lastly, the complete suppression of the private member, both as to his legislative initiative and as to the scope of action allowed to him by the rules. Not one of the three is the consequence of any intentional effort; they have all arisen out of the hard necessity of political requirements.

The reasons for entrusting greater power to the Speaker in the conduct of the proceedings can be clearly seen. The Irish policy of obstruction, which suddenly was recognised by English and Scotch as an enemy that had forced its way into their own house, had the simple result of calling into full activity the powers latent in the historic office of the Speaker. This process was carried through with the more speed and acceptability in that nobody on either side of the House had any real fear that the enhanced power of the Chair would be exercised, more than apparently, to the detriment of the House as a whole; all knew, even if they did not say, that it would be directed only against the foreign element, the Irish. Such was the tacit condition, accepted by all the British party elements, and, at all events down to the present time, complied with at almost every juncture.

No less obvious is the connection between practical politics and the new law of procedure in the matter of the position of authority given to the Government. As already pointed out in many places, it is an inevitable consequence of the completion in the nineteenth century of the system of parliamentary government. The British constitution, as it is understood and worked at the present day, places the entire executive power in the hands of a committee of the two Houses of Parliament : it has done away with the possibility of a political conflict between the majority of the House of Commons and the Ministry, and has established as a fundamental axiom that the withdrawal from a Ministry of the confidence of the majority in the Commons sets a term to its existence, whatever the wish of the Crown may be : with the settlement of these principles the old conception of the relation between the Government and the representatives of the people became obsolete and therefore also the old expression of their relation in the procedure of the House of Commons. It was then a simple dictate of political logic that the metamorphosis in the attitude of Government towards Parliament should receive outward formulation in parliamentary procedure. It is chiefly given, as we have seen, in the following ways :—(1) The greatest part of the time and energy of the House is securely assigned to the Government by the system of Government days ; (2) the transaction of the first "necessity of state," the granting of the supplies advocated by the Government, is confined to certain limits of time, and is accompanied by certain facilities ; (3) the head of the Government, as leader of the House, has by custom become entrusted with complete disposal of the arrangements for settling the programme of parliamentary business, exercising thus a privilege which gives constant occasion for showing the confidence of the majority.

Throughout the whole development the parliamentary tension produced by the Irish party gave the external impulse towards change ; but, though it had the effect of accelerating its speed, it was not its true cause. The real motive power came from the *alteration in the nature of the British Government itself*, on which we must still dwell for a moment. The British Cabinet and Prime Minister of the present day are

essentially different from their predecessors in the eighteenth and nineteenth centuries.[1] In this place, where we can only touch lightly on the subject, we may sum up in a sentence the effect of the transformation which has taken place: in the British Cabinet of to-day is concentrated all political power; all initiative in legislation and administration, and finally all public authority for carrying out the laws in kingdom and empire. In the sixteenth century and down to the middle of the seventeenth this wealth of authority was united in the hands of the Crown and its privy council; in the eighteenth century and the first half of the nineteenth Parliament was the dominant central organ from which proceeded the most powerful stimulus to action and all decisive acts of policy, legislation and administration; the second half of the last century saw the gradual transfer from Crown and Parliament into the hands of the Cabinet of one after another of the elements of authority and political power. This process—it must not be forgotten—took place side by side and in organic connection with the passing of political sovereignty into the hands of the House of Commons, supported, as it now was, by an electorate comprising all sections of the population.

The union of all elements of political power in the hands of the House of Commons and the simultaneous transfer of this concentrated living force to a Cabinet drawn exclusively from Parliament are the dominant features of the modern development of public law and politics in England. So strong has the tendency been that the only relics of independent power remaining to the Crown and the House of Lords are certain rights of resistance, certain privileges and possibilities of causing a temporary stoppage of the plans of the majority in the House of Commons, as represented in the Cabinet. The freedom of the Crown to choose a Prime Minister and the participation of Peers in the composition of the Cabinet are, perhaps, the only positive, constitutionally definable, functions in which the Crown and the House of Lords stand on a level with the Commons. But the very completeness of its power, which, if we disregard

[1] See *Sidney Low*, "Governance of England," chaps. ii–v.

technicalities, may be said to comprise the whole administration of domestic and foreign affairs, has *compelled the House of Commons to abdicate the exercise of almost all its authority in favour of its executive committee, the Ministry.* This was inevitable, for the reason, if there were no other, that a body with 670 members cannot initiate legislation, cannot even govern or administer. The evolution of the modern state has set before every nation the problem how the sovereignty of the people, realised in the form of representative constitutions, can be rendered operative for the current work and constructive activity of the state. This problem, when looked at closely, is seen to involve a search for that fundamental organisation of the state which shall correspond to its political and social conditions. In the British self-governing colonies and in the United States of America, it has been solved by the careful division of political authority and legal power among several organs, each dependent on the popular will. In Great Britain, on the contrary, a solution has been found in the completest possible concentration of actual and legal power in one and the same organ, the Cabinet, which is part and parcel of Parliament.[1] The British Government of the present day is, in its essence, something entirely new to the world. It may not be recognised at the first glance that it is really a novel solution which the political genius of the nation has found for the root problem of all government; but the failure to detect its originality must be ascribed to the ineradicable conservatism of the race, which here, as elsewhere, has with solicitous accuracy retained the historical forms which lay ready to its hand, and has used them as a veil behind which the novelty of the arrangements has been hidden. This could happen the more readily in England because the absence of any systematic theorising on constitutional subjects prevents all danger of self-deception as to the real essence of its institutions.

We have now reached the point at which the significance of the reforms in the order of business of the House of

[1] This may appear paradoxical when it is remembered that Continental political philosophy originally borrowed from England the doctrine of separation of powers.

Commons comes most plainly to light. Regarded at this angle they are a most explicit recognition of the profound transformation in the nature of the British Government and its relation to Parliament. Parliamentary procedure is the only department in the constitution of State and Parliament where the old conventions and forms, silently shaped in the seventeenth and eighteenth centuries, and elsewhere studiously protected, have been ruthlessly set aside from motives of political serviceableness, and where the new political division of strength has also received adequate new legal expression. The order of business in the House of Commons, the actual political sovereign of the empire, has of necessity been converted from a weapon to be used against Crown and Government by the representative assembly of the people into a *political weapon of the Ministry;* but the Ministry is both theoretically and practically an organ of the same House, and must be so regarded. Here we have the only satisfactory clue to the comprehension of the reforms in procedure that have been taking place, towards the end in so rapid and radical a manner, the only explanation of the surrender by the representatives of the nation of the strong positions occupied by them for centuries.

The third tendency which we have named, the depreciation of the position of the individual member on the floor of the House is closely connected with the second. It is a necessary corollary to the development of the parliamentary system of government. The assumption on which the system rests, the existence of two great parties alternately obtaining power and place, involves the maintenance of an elaborate discipline among the supporters of the Government. The establishment of the system whereby party cabinets of opposite views succeed one another leads to the further consequence that the Opposition is regarded as an indispensable component in the machine of the state. There follows a necessity for party discipline among the members of the Opposition also. The continuous increase of current business in Parliament during the nineteenth century, the constitutional necessity of carrying out all regulative acts of government by means of formal enactments, *i.e.*, by acts of parliament, and lastly the unbroken stream of many-sided legislative

reforms which has flowed on for more than a hundred years, have imposed upon the party Cabinets so heavy a burden of responsibility that any resistance, in the interests of individual members, to the progressive superiority of the Cabinet in the House might have been seen in advance to be futile. Each Cabinet which attains to power is more than its predecessor a direct mandatory of the electorate, having, with the majority given to it, received instructions and authority to carry out a definite political or legislative programme. The extension of the suffrage has operated in two directions—it has enormously strengthened the Government, who are supported by the votes of the majority of the nation, and it has deprived the single member, and with him the House of Commons as a whole, of importance and initiative. If it comes to pass that the self-imposed tie of confidence which binds the House of Commons and the Government is loosed by the former, then, unless Parliament is dissolved, all power reverts to the House only, however, to be handed on, with the help of the rules, and on the constitution of a new majority, to its creature, the new Government.

It is a proof of the profound consistency in the constitutional development of England that this most important change in its living public law during the second half of the nineteenth century has been able to find full expression in the order of business of the House of Commons. To what extent this has taken place is obvious if we compare the two Houses of Parliament from the point of view of procedure. The House of Lords has no closure, no guillotine, no "blocking" motions: full freedom is accorded to each member of the House: the Government have no special rights. Hence it came about that, in the struggle for existence which the Balfour Cabinet carried on after the revival of Protection, the Upper House was, with some justification, able to boast itself the last refuge of parliamentary freedom of debate: there the Government were not able to use the forms of the House to suppress all inconvenient discussion of fiscal policy. This must not be misunderstood: the free scope allowed to the peers is a measure of their political impotence. The debates of the